THE ACTS

OF THE

LEGISLATIVE COUNCIL OF INDIA

FOR THE YEAR

1859,

(IN CONTINUATION OF THE ACTS FOR THE PREVIOUS YEARS

WITH

AN ANALYTICAL ABSTRACT PREFIXED TO EACH ACT, AND A COPIOUS INDEX.

(TO BE ANNUALLY CONTINUED.)

BY

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1860.

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MERCHANT SEAMEN.

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[*Passed on the 25th January*, 1859.

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An Act for the amendment of the law relating to Merchant Seamen.

Preamble.

Whereas the law for the registry of Seamen and the grant of Register Tickets has been found to be ineffective for the purposes intended; and whereas, by Section CCLXXXVIII. of an Act of the Imperial Parliament called "the Merchant Shipping Act 1854," it is enacted that, "if the Governor General of India in Council, or the respective Legislative Authorities in any British possession abroad, by any Acts, Ordinances, or other appropriate legal means, apply or adapt any of the provisions in the third part of this Act contained to any British ships registered at, trading with, or being at any place within their respective jurisdictions, and to the owners, masters, mates, and crews thereof, such provisions, when so applied and adapted as aforesaid, and as long as they remain in force, shall, in respect of the ships and persons to which the same

are applied, be enforced, and penalties and punishments for the breach thereof shall be recovered and inflicted throughout Her Majesty's dominions: in the same manner as if such provisions had been hereby so adapted and applied, and such penalties and punishments had been hereby expressly imposed." And Whereas it is expedient to discontinue the practice of registry and the grant of register Tickets, and to apply to ships registered at, trading with, or being at any Port or place in India, certain provisions of the third part of the said Act with such adaptations and modifications as are required, and for the purposes aforesaid to repeal the laws now in force in India relating to Merchant Seamen: It is enacted as follows:—

Acts repealed.

I. Act XXVII. of 1850 entitled "An Act for the registry of Merchant Seamen," and Act XXVIII. of 1850 entitled "An Act for the encouragement of Merchant Seamen," are hereby repealed, except as to acts done and agreements made before the passing of this Act.

SHIPPING OFFICES.

Shipping Offices.

II. A Shipping Office shall be established at each of the Ports of Calcutta Madras, and Bombay, and at such other Ports as the Governor General of India in Council shall hereafter deem necessary. For every such Office there shall be a Superintendent, to be called a "Shipping Master," with such necessary Deputies, Clerks, and Servants, at such salaries, and subject to such regulations, as the local Government shall from time to time, with the sanction of the Governor General of India in Council, direct and appoint. Every act done by or before any Deputy duly appointed shall have the same effect as if done by or before a Shipping Master.

Appointment, removal, and control of Shipping Masters and Deputies.

III. The local Government shall have power to appoint and remove such Shipping Masters and Deputies; who shall respectively be subject to the control of that Government or of any intermediate authority which it may appoint.

Business of Shipping Masters.

IV. It shall be the general business of the Shipping Masters appointed under this Act, to superintend and facilitate the engagement and discharge of seamen in manner hereinafter mentioned, to

provide means for securing the presence on board at the proper times of men who are so engaged, and to perform such other duties relating to Merchant Seamen and Merchant Ships as are hereby or under the said Merchant Shipping Act 1854, or as may hereafter under the powers herein contained, be committed to them. It shall also be the duty of Shipping Masters to give to all persons desirous of apprenticing boys to the sea-service, and duly authorized so to do by Act XIX. of 1850 (concerning the binding of apprentices), and also to masters and owners of ships requiring apprentices, such assistance as may be in their power for facilitating the making of such apprenticeships.

Fees to be paid upon engagements and discharges.

V. Such fees, not exceeding the sums specified in the Table marked (A) in the Schedule to this Act, as are from time to time fixed by the local Government, shall be payable upon all engagements and discharges effected before Shipping Masters as hereinafter mentioned. Scales of the fees payable for the time being shall be conspicuously placed in the Shipping Offices; and all Shipping Masters, their Deputies, Clerks, and Servants, may refuse to proceed with any engagement unless the fees payable thereon are first paid.

Fees by whom to be paid, &c.

VI. Every owner or master of a ship engaging or discharging any seamen in a Shipping Office or before a Shipping Master, shall pay to the Shipping Master the whole of the fees hereby made payable in respect of such engagement or discharge, and may, for the purpose of in part reimbursing himself, deduct in respect of each such engagement or discharge from the wages of all persons (except apprentices) so engaged or discharged, retain, any sums not exceeding the sums specified in that behalf in the Table marked (B) in the Schedule hereto. Provided that, if in any cases the sums which the owner is so entitled to deduct, exceed the amount of the fee payable by him, such excess shall be paid by him to the Shipping Master in addition to such fee.

Penalty on Shipping Master taking other remuneration.

VII. Any Shipping Master, Deputy Shipping Master, or any Clerk or Servant in any Shipping Office, who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seamen for any merchant ship, excepting the

lawful fees payable under this Act, shall for every such offence incur a penalty not exceeding two hundred Rupees, and shall also be dismissed from his office.

Business of Shipping Office may be transacted at Custom House or elsewhere.

VIII. The local Government may direct that, at any place at which no separate Shipping Office is established, the whole or any part of the business of the Shipping Office shall be conducted at the Custom House, or at the Office of the Master Attendant or Harbour Master, or at such other Office as the Government shall direct, and thereupon the same shall be there conducted accordingly; and in respect of such business such Custom House or Office as aforesaid shall for all purposes be deemed to be a Shipping Office, and the Officer of Customs or other Officer there, to whom such business is committed, shall for all purposes be deemed to be a Shipping Master within the meaning of this Act.

Examinations and Certificates of Masters and Mates.

Examinations.

IX. Examinations shall be instituted for persons who intend to become Masters or Mates of Foreign-going ships or of Home-trade ships of a burden exceeding three hundred tons, or who wish to procure certificates of competency hereinafter mentioned.

Local Government to appoint examiners.

X. The local Government or any Board or Officer duly authorized by the local Government in that behalf shall from time to time nominate two or more competent persons for the purpose of examining the qualifications of the applicants for examination.

Rules for conduct of examination.

The local Government may, with the sanction of the Governor General of India in Council, make rules for the conduct of such examinations and as to the qualifications to be required; and such rules shall be strictly adhered to by all examiners.

Fees.

Fees at the following rates shall be paid by all applicants for examination:—

For a certificate as Master	...	10 Rupees.
Ditto Ditto as Mate	...	5 „

Certificates of competency.

XI. The local Government or such Board or Officer as aforesaid shall deliver to every applicant who is reported by the examiners to have passed the

examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability, and general good conduct on board-ship, a certifiate (hereinafter called a "certificate of competency") to the effect that he is competent to act as master or mate of a Foreign-going ship or of a Home-trade ship of a burden exceeding three hundred tons, as the case may be.

Certificates of service.

XII. Certificates of service differing in form from Certificates of competency shall be granted as follows, (that is to say)—

1.—Every person who before the passing of this Act has served as Master in the British Merchant Service or as Master of any Foreign-going ship registered under Act X. of 1841, or who has attained or shall attain the rank of Lieutenant, Master, passed Mate, or second Mate, or any higher rank, in the service of Her Majesty or of the East India Company, shall be entitled to a Certificate of service as Master for Foreign-going ships.

2.—Every person who before the passing of this Act has served as Mate in the British Merchant Service or as Mate of any such ship as aforesaid shall be entitled to a Certificate of service as Mate for Foreign-going ships.

3.—Every person who before the passing of this Act has served as Master or Mate of a Home-trade ship of a burden exceeding three hundred tons, shall be entitled to a Certificate of service as Master or Mate (according to such previous service) for such Home-trade ships.

And each of such Certificates of service shall contain particulars of the name and of the length and nature of the previous service of the person to whom it is delivered; and the local Government or such other authority as aforesaid shall deliver such certificates of service to the various persons so respectively entitled thereto upon their proving themselves to have attained such rank or to have served as aforesaid, and upon their giving a full and satisfactory account of the particulars aforesaid.

No Foreign-going ship and no Home-trade ship above 300 tons to go to sea without certificate of Master, &c.

XIII. No Foreign-going ship or Home-trade ship of a burden exceeding three hundred tons shall go to sea from any Port in India unless the Master and one Officer besides the Master have obtained and possess valid and appropriate Certificates either of competency or service under this Act or under the Merchant Shipping Act 1854; and whoever,

having been engaged to serve as Master or Mate, goes to sea as aforesaid as such Master or Mate without being at the time entitled to and possessed of such a Certificate as hereinbefore required, and whoever employs any person as such Master or Mate without ascertaining that he is at the time entitled to and possessed of such certificate, shall for each such offence be liable to a penalty of five hundred Rupees.

Certificates for Foreign-going ships available for Home-trade ships.

XIV. Every Certificate of competency for a Foreign-going ship shall be deemed to be of a higher grade than the corresponding Certificate for a Home-trade ship, and shall entitle the lawful holder thereof to go to sea in the corresponding grade in such last mentioned ship; but no certificate for a Home-trade ship shall entitle the holder to go to sea as Master or Mate of a Foreign-going ship.

Record of grants; cancellations, &c. of Certificates.

XV. All Certificates, whether of competency or service, shall be made in duplicate; and one part shall be delivered to the person entitled to the Certificate, and the other shall be kept and recorded as the local Government shall direct. A note of all orders made for cancelling, suspending, altering, or otherwise affecting any Certificate in pursuance of the powers herein contained, shall be entered in the record of Certificates.

Loss of Certificate.

XVI. Whenever any Master or Mate proves to the satisfaction of the local Government or such other authority as aforesaid that he has, without fault on his part, lost or been deprived of any Certificate already granted to him, a copy of the Certificate to which by the record so kept as aforesaid he appears to be entitled, shall be delivered to him, and shall have all the effect of the original.

Foregoing provisions not to apply to ships registered under Act X of 1841, navigated by Asiatic seamen and trading between Indian and Arabian Ports.

XVII. The foregoing Sections, relating to examinations and Certificates of Masters and Mates, shall not apply to ships registered under Act X. of 1841, and trading between Ports in India and the Coast of Arabia, when such ships are navigated and manned exclusively by Arabs, Lascars, or other Asiatic Masters and Seamen.

ENGAGEMENT OF SEAMEN.

XVIII. The local Government, or any Board or Officer duly

Licenses to procure seamen. authorized by the local Government in that behalf, *may grant to such persons as may be* deemed fit, licenses to engage or supply seamen for merchant ships, to continue for such periods, to be upon such terms, and to be revocable upon such conditions as the Government thinks proper.

XIX. The following offences shall be punishable as hereinafter mentioned; (that is to say)—

Penalties.

(1.) If any person not licensed as aforesaid, other than the Owner or Master or Mate of the ship, or some person who is *bonâ fide* the servant and in the constant employ of the Owner, or a Shipping Master duly appointed as aforesaid, engages or supplies any seaman to be entered on board any ship, he shall for each seaman so engaged or supplied incur a penalty not exceeding one hundred Rupees.

For supplying seamen without license.

(2.) If any person employs any unlicensed person, other than persons so excepted as aforesaid, for the purpose of engaging or supplying any seaman to be entered on board any ship, he shall for each seaman so engaged or supplied incur a penalty not exceeding one hundred Rupees, and, if licensed, shall in addition forfeit his license.

For employing unlicensed persons.

(3.) If any person knowingly receives or accepts to be entered on board any ship any seaman who has been engaged or supplied contrary to the provisions of this Act, he shall for every seaman so engaged or supplied incur a penalty not exceeding one hundred Rupees.

For receiving seamen illegally supplied.

XX. If any person demands or receives, either directly or indirectly, from any seaman, or from any person seeking employment as a seaman, or from any person on his behalf, any remuneration whatever, other than the fees hereby authorized, for providing him with employment, he shall for every such offence incur a penalty not exceeding fifty Rupees, and, if licensed as aforesaid, shall in addition forfeit his license.

Penalty for receiving remuneration from seamen for shipping them.

XXI. The Master of every ship, except ships of a burden not exceeding three hundred tons employed only in the Home-trade, shall enter into an agreement with every seaman whom he carries to sea from any Port in India as one of his crew, in the manner

Agreements with seamen.

hereinafter mentioned; and every such agreement shall be in a form sanctioned by the Governor General of India in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the Master before any seaman signs the same, and shall contain the following particulars as terms thereof; (that is to say)—

1.—The nature, and as far as practicable, the duration of the intended voyage or engagement.

2.—The number and description of the crew, specifying how many are engaged as sailors.

3.—The time at which each seaman is to be on board or to begin work.

4.—The capacity in which each seaman is to serve.

5.—The amount of wages which each seaman is to receive.

6.—A scale of the provisions which are to be furnished to each seaman.

7.—Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Government as regulations proper to be adopted and which the parties agree to adopt.

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the Master and seaman in each case (not being inconsistent with the provisions of this Act), as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law. Provided that, if the master of any ship belonging to the United Kingdom or any British possession has an agreement with his crew made in due form according to the law of the place to which such ship belongs or in which her crew were engaged, and engages single seamen in any Port in India, such seaman may sign the agreement so made, and it shall not be necessary for them to sign an agreement under this Act. Provided also that, in the case of lascars or other native seamen, when it shall be agreed that the service of any such seaman shall end at any Port not in India the agreement shall contain stipulations for providing for such seaman fit employment on board some other vessel bound

Proviso as to forms for British or Colonial ships.

Proviso where lascars are shipped.

to the Port at which he was shipped, or such other Port as may be agreed on, or for providing for him a passage to some such Port as aforesaid free of charge, or on such other terms as may be agreed on; and every such stipulation shall be signed by the Owner of the vessel or by the Master on his behalf.

XXII. In the case of all Foreign-going ships, in whatever part of Her Majesty's Dominions the same are registered, the following rules shall be observed with respect to agreements; (that is to say)—

For Foreign-going ships such agreements, except in special cases to be made before and attested by a Shipping Master.

1.—Every agreement made in any Port in India (except in such cases of agreements with substitutes as are hereafter specially provided for) shall be signed by each seaman in the presence of a Shipping Master.

Agreement to be signed by seaman.

2.—Such Shipping Master shall cause the agreement to be read over and explained to each seaman, in a language understood by him, or shall otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature.

Shipping Master to cause agreement to be explained to seaman.

3.—When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the Shipping Master, and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the Master.

To be in duplicate.

4.—In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before some Shipping Master duly appointed in the manner hereinbefore specified; and whenever such last mentioned engagement cannot be so made, the master shall, before the ship puts to sea if practicable, and if not as soon afterwards as possible, cause the agreement to be read over and explained to the seamen; and the seamen shall thereupon sign the same in the presence of a witness, who shall attest their signatures.

Provision for substitutes.

Foreign-going ships making short voyages may have running agreements.

XXIII. In the case of Foreign-going ships making voyages averaging less than six months in duration, running agreements with the crew may be made to extend over two or more voyages, so that no such agreement shall extend beyond the next following 30th day of June or 31st day of December, or the first arrival of the ship at her Port of destination in India after such date, or the discharge of cargo consequent upon such arrival; and every person entering into such agreement, whether engaged upon the first commencement thereof or otherwise, shall enter into and sign the same in the manner hereby required for other Foreign-going ships; and every person engaged thereunder, if discharged in any Port in India, shall be discharged in the manner hereby required for the discharge of seamen belonging to other Foreign-going ships.

Engagement and discharge of seamen in the meantime.

XXIV. The master of every Foreign-going ship for which such a running agreement as aforesaid is made shall, upon every return to any Port in India before the final termination of the agreement, discharge or engage before the Shipping Master at such Port any seaman whom he is required by law so to discharge or engage; and shall upon every such return endorse on the agreement a statement (as the case may be) either that no such discharges or engagements have been made or are intended to be made before the ship again leaves Port, or that all such discharges or engagements have been duly made as hereinbefore required; and shall deliver the agreement so endorsed to the Shipping Master; and any Master who wilfully makes a false statement in such endorsement shall incur a penalty not exceeding two hundred Rupees; and the Shipping Master shall also sign an endorsement on the agreement to the effect that the provisions of this Act relating to such agreement have been complied with and shall re-deliver the agreement so endorsed to the Master.

Fees to be paid on such running agreements.

XXV. For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to Foreign-going ships which have running agreements as aforesaid, the crew shall be considered to be engaged when the agreement is first signed and to be discharged when the agreement finally terminates; and all intermediate engagements and discharges

shall be considered to be engagements and discharges of single seamen.

In Home-trade ships agreement to be entered into before a Shipping Master or other witness.

XXVI. In the case of Home-trade ships of a burthen exceeding three hundred tons, crews or single seamen may, if the Master thinks fit, be engaged before a Shipping Master in the manner hereinbefore directed with respect to Foreign-going ships; and in every case in which the engagement is not so made, the Master shall, before the ship puts to sea if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to each seaman, and the seaman shall thereupon sign the same in the presence of a witness, who shall attest his signature.

Special agreements for Home-trade ships belonging to same Owner.

XXVII. In cases where several Home-trade ships belong to the same Owner, the agreement with the seamen may, notwithstanding any thing herein contained, be made by the Owner instead of by the Master, and the seamen may be engaged to serve in any two or more of such ships provided that the names of the ships and the nature of the service are specified in the agreement; but, with the foregoing exception, all provisions herein contained which relate to ordinary agreements for Home-trade ships shall be applicable to agreements made in pursuance of this Section.

Penalty for shipping seamen without agreement duly executed.

XXVIII. If in any case a Master carries any seaman to sea without entering into an agreement with him in the form and manner and at the place and time hereby in such case required, the Master shall for each such offence incur a penalty not exceeding fifty Rupees.

Changes in crew to be reported.

XXIX. The Master of every Foreign-going ship, of which the crew has been engaged before a Shipping Master, shall, before finally leaving India sign and send to the nearest Shipping Master a full and accurate statement, in a form sanctioned by the Governor General of India in Council, of every change which takes place in his crew before finally leaving India, and in default shall for each offence incur a penalty not exceeding fifty Rupees; and such statement shall be admissible in evidence subject to all just exceptions.

XXX. For the purpose of preventing any seamen from being shipped at any Port in India contrary to the provisions of this Act, the Shipping Master by himself or his Deputy may enter at any time on board any ship open which he shall have reason to believe that seamen have been shipped, and may muster and examine the several seamen employed therein; and any person who shall obstruct the said Shipping Master or Deputy in such duty shall be liable to a penalty not exceeding one hundred Rupees.

To prevent infraction of Act, Shipping Master may board vessels and muster seamen.

XXXI. The following rules shall be observed with respect to the production of agreements and certificates of competency or service for Foreign-going ships (that is to say)—

Production of agreements and certificates.

1. The Master of every Foreign-going ship shall, on signing the agreement with his crew, produce to the Shipping Master before whom the same is signed the certificates of competency or service which the said Master and his Mate are hereby required to possess; and upon such production being duly made, and the agreement being duly executed as hereby required, the Shipping Master shall sign and give to the Master a certificate to that effect.

2. In the case of running agreements for Foreign-going ships, the Shipping Master shall, before the second and every subsequent voyage made after the first commencement of the agreement, sign and give to the Master, on his complying with the provisions herein contained with respect to such agreements, and producing to the Shipping Master the certificate of competency or service of any Mate then first engaged by him, a certificate to that effect.

3. The Master of every Foreign-going ship shall, before proceeding to sea, produce the certificate so to be given to him by the Shipping Master as aforesaid to the Collector of Customs, or if there be no Collector of Customs to the Officer whose duty it is to grant a port-clearance. No Officer of Customs or other Officer shall clear any such ship outwards without such production; and if any such ship attempts to go to sea without a clearance, any such Officer may detain her until such certificate as aforesaid is produced.

4. The Master of every Foreign-going ship shall, within

forty-eight hours after the ship's arrival at her final Port of destination in India, or upon the discharge of the crew, whichever first happens, deliver such agreement to a Shipping Master at the place; and such Shipping Master shall thereupon give to the Master a certificate of such delivery; and no Officer of Customs or other Officer shall clear any Foreign-going ship inwards without the production of such certificate.

And if the Master of any Foreign-going ship fails to deliver the agreement to a Shipping Master at the time and in the manner hereby directed, he shall for every default incur a penalty not exceeding fifty Rupees.

Rules as to production of agreements and certificate for Home-trade ships.

XXXII. The following rules shall be observed with respect to the production of agreements and certificates of competency or service for Home-trade ships of a burden exceeding three hundred tons, (that is to say)—

1. No such agreement shall extend beyond the next following thirtieth day of June or thirty-first day of December, or the first arrival of the ship at her final Port of destination in India after such date, or the discharge of cargo consequent upon such arrival.

2. The Master or Owner of every such ship shall within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, or if the ship is not at any Port in India within twenty-one days after either the 30th day of June or the 31st day of December in any year within forty-eight hours after her next arrival at any Port in India, transmit or deliver to some Shipping Master in India every agreement made within the six calendar months next preceding such days respectively, and shall also produce to the Shipping Master the certificates of competency or service which the said Master and his Mate are herby required to possess.

3. The Shipping Master shall thereupon give to the Master or Owner a certificate of such delivery and production; and no Officer of Customs or other Officer authorized to grant a port-clearance shall grant a clearance for any such ship without the production of such certificate; and if any such ship attempts to go to sea without such clearance, any such Officer may detain her until the said certificate is produced.

And if the agreement for any Home-trade ship is not delivered or transmitted by the Master or Owner to a Shipping Master at the time and in the manner hereby directed, such Master or Owner shall for every default incur a penalty not exceeding fifty Rupees.

XXXIII. Every erasure, interlineation, or alteration in any such agreement with seamen as is required by this Act (except additions so made as hereinbefore directed for shipping substitutes or persons engaged subsequently to the first departure of the ship) shall be wholly inoperative, unless proved to have been made with the consent of all the persons interested in such erasure, interlineation, or alteration by the written attestation (if made in Her Majesty's Dominions) of some Shipping Master, Justice, Officer of Customs, or other public functionary, or (if made out of Her Majesty's Dominions) of a British Consular Officer, or where there is no such Officer, of two respectable British Merchants.

Alteration to be void unless attested to have been made with the consent of all parties.

XXXIV. The Master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement, and if necessary a translation thereof in a language understood by the majority of the crew (omitting the signatures), to be placed or posted up in such part of the ship as to be accessible to the crew, and in default shall for each offence incur a penalty not exceeding fifty Rupees.

Copy of agreement to be made accessible to crew.

XXXV. Any seaman who has signed an agreement and is afterwards discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages, and may, on adducing such evidence as the Court or Magistrate hearing the case deems satisfactory, of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned.

Seamen discharged before voyage to have compensation.

Regulation of Advances.

XXXVI. No advance of wages shall be made or advance-note given to any person but the seaman himself; and no advance of wages shall be made or advance-note given for any greater sum than the amount of one month's wages, nor unless the agreement contains a stipulation for the same and an accurate statement of the amount thereof; and no advance-note shall be given to any seaman who signs the agreement before a Shipping Master, unless in the presence of such Shipping Master.

Regulation of advances and advance-notes.

XXXVII. If any advance of wages is made or any advance-note given to any seaman in any such manner as to constitute a breach of any of the above provisions, the wages of such seaman shall be recoverable by him as if no such advance had been made or advance-note given; and in the case of any advance-note so given, no person shall be sued thereon under the provisions hereinafter contained unless he was in person or by his agent a party to the irregular or improper manner of giving the same.

Advances irregularly or improperly made not to be a discharge of wages.

Allotment of Wages.

XXXVIII. All stipulations for the allotment of any part of the wages of a seaman during his absence, which are made at the commencement of the voyage, shall be inserted in the agreement and shall state the amounts and times of the payments to be made. All allotment-notes shall be in forms sanctioned by the local Government, and shall be made for the benefit only of a relative of the seaman or some member of his family to be named in the note, and shall be payable to the Shipping Master on account of such relative of the seaman or member of his family. Such allotment shall not in any case exceed one-third of the wages of the seaman.

Stipulations for allotment to be inserted in the agreement.

Allotment-notes.

XXXIX. The Owner or any Agent who has authorized the drawing of an allotment-note shall pay to the Shipping Master on demand the sums allotted by the note, when and as the same are made payable, unless the seaman is shown in manner hereinafter mentioned to have forfeited or ceased to be entitled to the wages out

Owner &c. to pay to Shipping Master the sums allotted.

of which the allotment is to be paid; and in the event of such sums not being paid to the Shipping Master on demand, the Shipping Master may sue for and recover them with costs. The seaman shall be presumed to be duly earning his wages, unlesst he contrary is shown to the satisfaction of the Court or Magistrate, either by the official statement of the change in the crew caused by his absence made and signed by the Master as by this Act is required, or by a duly certified copy of some entry in the official log-book to the effect that he has died or left the ship, or by a credible letter from the Master of the ship to the same effect, or by such other evidence, of whatever description, as the Court or Magistrate trying the case considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid.

Suit on allotment-notes. Evidence.

XL. The Shipping Master, on receiving any such sum as aforesaid, shall pay it over to the person named in the allotment-note. All such receipts and payments shall be entered in a book, and all entries in the said book shall be authenticated by the signature of the Shipping Master or his Deputy; and the said book shall be, at all times, open to the inspection of the parties concerned.

Receipts and payments by Shipping Master on account of allotment-notes.

Discharge and Payment of Wages.

XLI. All seamen discharged from any Foreign-going ship at any Port in India in whatever part of Her Majesty's Dominions the ship is registered, shall be discharged and receive their wages in the presence of a Shipping Master duly appointed under this Act, except in cases where some competent Court otherwise directs; and any master or owner of any such ship who discharges any seaman belonging thereto, or except as aforesaid pays his wages in any other manner, shall incur a penalty not exceeding one hundred Rupees; and in the case of Home-trade ships of a burden exceeding three hundred tons, seamen may, if the owner or master so desires, be discharged and receive their wages in like manner.

Discharge from Foreign-going ships to be made before Shipping Master.

XLII. Every master shall, not less than twenty-four hours

Master to deliver account of wages.

before paying off or discharging any seaman, deliver to him, or, if he is to be discharged before a Shipping Master, to such Shipping Master, a full and true account, in a form sanctioned by the local Government, of his wages and of all deductions to be made therefrom on any account whatever, and in default shall for each offence incur a penalty not exceeding fifty Rupees; and no deduction from the wages of any seaman (except in respect of any matter happening after such delivery) shall be allowed unless it is included in the account so delivered; and the Master shall during the voyage enter the various matters in respect of which such deductions are made, with the amounts of the respective deductions as they occur, in a book to be kept for that purpose, and shall, if required, produce such book at the time of the payment of wages and also upon the hearing before any competent authority of any complaint or question relating to such payments.

On discharge, Masters to give seamen certificates of discharge, and return certificates of competency or service to mates.

XLIII. Upon the discharge of any seaman or upon payment of his wages, the Master shall sign and give him a certificate of his discharge, in a form sanctioned by the local Government, specifying the period of his service and the time and place of his discharge; and if any Master fails to sign and give to any such seaman such certificate of discharge, he shall for each such offence incur a penalty not exceeding one hundred Rupees; and the master shall also, upon the discharge of every certificated mate whose certificate of competency or service has been delivered to and retained by him, return such certificate, and shall in default incur a penalty not exceeding two hundred Rupees.

Shipping Master may decide questions which parties refer to him.

XLIV. Every Shipping Master shall hear and decide any question whatever between a master or owner and any of his crew which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall in any legal proceeding which may be taken in the matter before any Court or magistrate, be deemed to be conclusive as to the rights of the parties; and any document purporting to be such submission or award shall be *primâ facie* evidence thereof.

How award may be enforced.

An award made by a Shipping Master under this Section may be enforced by a Magistrate in the same manner as an order for the payment of wages made by such Magistrate under the provision of Section LV.

Master and others to produce ship's papers to Shipping Masters, and give evidence.

XLV. In any proceeding relating to the wages, claims, or discharge of any seaman carried on before any Shipping Master under the provisions of this Act, such Shipping Master may call upon the owner or his agent, or upon the master or any mate or other member of the crew, to produce any log-books, papers, or other documents in their respective possession or power relating to any matter in question in such proceeding, and may call before him and examine any of such persons being then at or near the place on any such matter; and every owner, agent, master, mate, or other member of the crew who, when called upon by the Shipping Master, does not produce any such paper or document as aforesaid if in his possession or power, or does not appear and give evidence, shall, unless he shows some reasonable excuse for such default, for each such offence incur a penalty not exceeding fifty Rupees.

Settlement of wages.

XLVI. The following rules shall be observed with respect to the settlement of wages, (that is to say)—

Release to be signed before and attested by the Shipping Master.

1.—Upon the completion before a Shipping Master of any discharge and settlement, the Master or Owner and each seaman shall respectively, in the presence of the Shipping Master, sign, in a form sanctioned by the local Government, a mutual release of all claims in respect of the past voyage or engagement, and the Shipping Master shall also sign and attest the release and shall retain the same.

To be a discharge.

2.—Such release so signed and attested shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement.

And to be evidence.

3.—A copy of such release, certified under the hand of such Shipping Master to be a true copy, shall be given by him to any party thereto requiring the same, and such copy shall be receivable in evidence upon any future question touching such claims as aforesaid, and shall

have all the effect of the original of which it purports to be a copy.

No other receipt to be a discharge.

4.—In cases in which discharge and settlement before a Shipping Master are hereby required, no payment, receipt, settlement, or discharge otherwise made shall operate or be admitted as evidence of the release or satisfaction of any claim.

Voucher to be given to Master and to be evidence.

5.—Upon any payment being made by a Master before a Shipping Master, the Shipping Master shall, if required, sign and give to such Master a statement of the whole amount so paid, and such statement shall, as between the Master and his employer, be received as evidence that he has made the payments therein mentioned.

LEGAL RIGHTS TO WAGES.

Right to wages and provisions when to begin.

XLVII. A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

Seamen not to give up certain rights.

XLVIII. No seaman shall by any agreement forfeit his lien upon the ship or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this Act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative.

Wages not to be dependent on the earning of freight.

XLIX. No right to wages shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores shall bar his claim.

L. If any seaman or apprentice to whom wages are due under

In case of death, such wages to be paid as after mentioned.

the last preceding Section dies before the same are paid, they shall be paid and applied in the manner hereinafter specified with regard to the wages of seamen who die during a voyage.

Rights to wages in case of termination of service by wreck or illness.

LI. In cases where the service of any seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship, and also in cases where such service terminates before such period as aforesaid by reason of his being left on shore at any place abroad under a certificate of his unfitness or inability to proceed on the voage, granted under the provisions of the Merchant Shiping Act 1851, such seaman shall be entitled to wages for the time of service prior to such termination as aforesaid, but not for any further period.

Wages not to accrue during refusal to work or imprisonment.

LII. No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work; nor, unless the Court or Magistrate hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

Period within which wages are to be paid.

LIII. The Master or Owner of every ship shall pay to every seaman his wages within three days after the cargo has been delivered or within five days after the seaman's discharge, whichever first happens; and the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him; and every Master or Owner who neglects or refuses to make payment in manner aforesaid without sufficient cause, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days not exceeding ten days during which payment is delayed beyond the respective periods aforesaid; and such sum shall be recoverable as wages.

What amount in the current coin of India is recoverable by seaman under an agreement expressing his wages &c. to be payable in a Foreign coin.

LIV. When any monies are payable in India to any seaman or apprentice for wages or otherwise under any agreement wherein such monies are expressed to be payable in some denomination of coin other than the current coin of the Port or place wherein the same have become pay-

able, the seaman or apprentice shall be entitled to demand and recover, in the current coin of such Port or place, the amount due to him estimated according to the established par value of the coin wherein the same is so expressed to be payable.

Mode of Recovering Wages.

Seaman may sue summarily before any Magistrate for wages not exceeding 500 Rupees.

LV. Any seaman or apprentice or any person duly authorized on his behalf may sue, in a summary manner, before any magistrate acting in or near to the place at which the service has terminated or at which the seaman or apprentice has been discharged or at which any person upon whom the claim is made is or resides, for any amount of wages due to such seaman or apprentice not exceeding five hundred Rupees.

Order of Magistrate to be final.

Every order made by such Magistrate in the matter shall be final.

Levy of wages by distress.

LVI. When an order for the payment of wages is made by a Magistrate under the last preceding Section and the wages are not paid at the time and in the manner prescribed, the sum mentioned in the order, with such further sum as may be thereby awarded for costs, shall be levied by distress and sale of the goods and chattels of the person directed to pay the same under a warrant to be issued for that purpose by the Magistrate.

No suit for wages under 500 Rupees to be instituted in Admiralty Court &c., except in certain cases.

LVII. No suit or proceeding for the recovery of wages under the sum of five hundred Rupees shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty or in any Court of Civil Judicature other than the Court of Small Causes, where such Court exists, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of any such Court or unless the Magistrate, acting under the authority of this Act, refers the case to be adjudged by such Court.

Master to have same remedies for wages as seamen.

LVIII. Every Master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his wages which by this Act or by any law or custom any seaman,

not being a Master, has for the recovery of his wages; and if in any proceeding in any Court of Admiralty or Vice-Admiralty touching the claim of a Master to wages, any right of set-off or counter-claim is set up, it shall be lawful for such Court to enter into and adjudicate upon all questions, and to settle all accounts then arising or out-standing and unsettled between the parties to the proceeding, and to direct payment of any balance which is found to be due.

Wages and Effects of Deceased Seamen.

Master to take charge of effects of deceased seaman.

LIX. Whenever a seaman or apprentice, on a voyage which is to terminate at any Port in India, dies during such voyage, the Master shall take charge of all money, clothes, and effects which he leaves on board, and shall enter in the official log-book a statement of the amount of money and a description of the effect left by the deceased, and in case of a sale of such effects, the sum received for each article sold.

Effects and wages to be paid to Shipping Master with full accounts.

LX. The master shall, within forty-eight hours after his arrival at his Port of destination in India, deliver any such effects as aforesaid, and pay any money which he has taken charge of or received, and also the wages due to deceased, to the Shipping Master at such Port, and shall give to such Shipping Master an account of the effects, money, and wages so to be delivered and paid; and no deductions claimed in such account shall be allowed unless verified, if there is an official log-book, by the entry therein hereinbefore required, and also by such other vouchers (if any) as may be reasonably required by the Shipping Master to whom the account is rendered.

Penalties for not taking charge of or accounting for such monies and effects.

LXI. If the master fails to take such charge of the money or other effects of a seaman or apprentice dying during a voyage, or to make such entries in respect thereof, or to make such payment or delivery, or to give such account as hereinbefore respectively directed, he shall be accountable for the money, wages, and effects of the seaman or apprentice to the Shipping Master as aforesaid, and shall pay and deliver the same accordingly; and such Master shall in addition incur a penalty not exceeding treble the value of the money or effects, or if such value is not

ascertained, not exceeding five hundred Rupees. All money, wages, and effects of any seaman or apprentice dying during a voyage shall be recoverable in the same Courts and by the same modes of proceeding by which seamen are hereby enabled to recover wages due to them.

Wages and property of deceased seamen may be paid without probate.

LXII. When money or effects left by, or due to, any deceased seaman or apprentice, are paid or delivered to a Shipping Master, then, subject to such deductions for expenses incurred in respect of the seaman or apprentice or of his said money and effects as the Shipping Master thinks proper to allow, the Shipping Master may pay and deliver the said money and effects to any claimants who can prove themselves to the satisfaction of the said Shipping Master to be entitled thereto, and the said Shipping Master shall be thereby discharged from all further liability in respect of the money and effects so paid and delivered; or if he think fit so to do, the Shipping Master may require probate or letters of administration or a certificate under Act XX. of 1841 to be taken out, and thereupon pay and deliver the said money and effects to the legal representative of the deceased.

Disposal of wages or effects of deceased seamen not claimed within one year.

LXIII. In cases of wages or effects of deceased seamen or apprentices received by any Shipping Master to which no claim is substantiated within one year from the receipt thereof by such Shipping Master, it shall be the duty of the Shipping Master to cause such effects to be sold and to pay the proceeds of the sale and the unclaimed wages into the Public Treasury. If any subsequent claim is made to such money and is established to the satisfaction of the Shipping Master, the amount or so much as shall appear to be due to the claimant, shall be paid out of the Public Treasury. If the claim is not established to the satisfaction of the Shipping Master, the claimant may apply by petition in a summary way to the Supreme Court of Judicature of the Presidency, or in any station of the settlement of Prince of Wales' Island, Singapore, and Malacca, to the Court of Judicature there; and such Court, after taking evidence either orally or on affidavit, shall make such order on the petition as shall seem just. Provided that, after the expiration of six years from the receipt

If subsequent claim be made thereto.

Proviso.

of such wages or effects by the Shipping Master, no such claim shall be entertained without the sanction of the local Government.

PROVISIONS, HEALTH, AND ACCOMMODATION.

Survey of provisions and water on complaint made.

LXIV. Any three or more of the crew of any Ship registered at, trading with, or being at any Port or place in India, may complain to any Shipping Master or other Officer duly appointed in this behalf by the local Government that the provisions or water for the use of the crew are at any time of bad quality, unfit for use, or deficient in quantity; and such Officer may thereupon examine the said provisions or water or cause them to be examined; and if, on examination, such provisions or water are found to be of bad quality and unfit for use, or to be deficient in quantity, the person making such examination shall signify the same in writing to the master of the ship; and if such master does not thereupon provide other proper provisions or water in lieu of any so signified to be of a bad quality and unfit for use, or does not procure the requisite quantity of any so signified to be insufficient in quantity, or uses any provisions or water which have been so signified as aforesaid to be of a bad quality and unfit for use, he shall in every such case incur a penalty not exceeding two hundred Rupees; and upon every such examination as aforesaid, the Officers making or directing the same shall enter a statement of the result of the examination in the Official log, and shall send a report thereof to the Shipping Master, and such report, if produced out of the custody of such Shipping Master, shall be received in evidence in any legal proceeding.

Forfeiture for frivolous complaint.

LXV. If the Officer to whom any such complaint as last aforesaid is made, certifies in such statement as aforesaid that there was no reasonable ground for such complaint, each of the parties so complaining shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages.

Allowance for short or bad provision.

LXVI. In the following cases (that is to say)—

1. If during a voyage the allowance of any of the provisions which any seaman has by his agreement stipulated for, is reduced

(except in accordance with any regulations for reduction by way of punishment contained in the agreement, and also except for any time during which such seaman wilfully and without sufficient cause refuses or neglects to perform his duty or is lawfully under confinement for misconduct, either on board or on shore);

2. If it is shown that any of such provisions are or have during the voyage been bad in quality and unfit for use;

The seaman shall receive by way of compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages, (that is to say)—

1. If his allowance is reduced by any quantity not exceeding one-third of the quantity specified in the agreement, a sum not exceeding three annas in the case of a European seaman or other person shipped on the same footing as a European seaman, or one anna in the case of a lascar or native seaman.

2. If his allowance is reduced by more than one-third of such quantity, six annas in the case of a European seaman or other person shipped on the same footing as a European seaman, or two annas in the case of a lascar or native seaman.

3. In respect of such bad quality as aforesaid, a sum not exceeding eight annas in the case of a European seaman or other person shipped on the same footing as a European seaman, or three annas in the case of a lascar or native seaman.

But if it is shown, to the satisfaction of the Court or Magistrate trying the case, that any provisions, the allowance of which has been reduced, could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, such Court or Magistrate shall take such circumstances into consideration and shall modify or refuse compensation as the justice of the case may require.

Medicines, &c. to be provided and kept on board certain ships.

LXVII. All Foreign-going ships and all Home-trade ships of a burden exceeding three hundred tons shall have always on board a sufficient supply of medicines and appliances, suitable for diseases and accidents likely to happen on sea voyages, according to such scale as shall be from time to time issued by the local Government with the approval of the Governor General of India in Council and published at Calcutta, Madras, and Bombay in the

Government Gazettes, and in the Straits Settlement in such manner as the Governor shall notify, and in default thereof, the Owner or Master of every such ship shall be liable to a penalty not exceeding two hundred Rupees. Provided, however, that this Section shall not apply to ships navigating from the United Kingdom and coming within the provisions of Section CCXXIV. of the Merchant Shipping Act 1854.

Proviso.

LXVIII. Every Master shall keep on board proper weights and measures for the purposes of determining the quantities of the several provisions and articles served out, and shall allow the same to be used at the time of serving out such provisions and articles in the presence of a witness whenever any dispute arises about such quantities, and in default shall for every offence incur a penalty not exceeding one hundred Rupees.

Masters to keep weights and measures on board.

LXIX. Whenever the Master or any seaman of any ship registered at any place in India shall receive any hurt or injury in the service of the vessel, the expense of providing the necessary surgical and medical advice and attendance with medicines, and of his subsistence, until he shall be cured or shall be brought back to the Port from which he was shipped or other Port agreed upon, shall be defrayed, with the cost of his conveyance to such Port, by the Owner of the vessel without any deduction on that account from the wages of such Master, officer, or seaman; and if paid by himself, may be recovered as part of his wages; and if paid or allowed out of any monies forming part of the Revenues of India, shall be a charge upon the ship, and may be recovered with full costs of suit by the Secretary of State in Council.

Expense of medical attendance and subsistence in case of illness how to be defrayed.

LXX. A place or places of shelter shall be provided below a well-caulked and substantial deck for the men engaged under this Act; such place or places shall be so arranged as to allow for the men the following spaces :—

Place to be appropriated.

1.—For each European seaman or apprentice or other person shipped on the same footing as a European seaman, nine superficial feet if the place be not less than six feet in height from deck to deck; or fifty-four cubic feet if the height from deck to deck be less than six feet.

To European seamen.

2.—For each lascar or native seaman or other person shipped on the same footing as a lascar, four superficial feet; and if the place allotted be under the top-gallant forecastle, such forecastle deck shall be not less than four feet six inches above the one below it.

To lascars or native seamen.

Every such place shall be kept free from stores or goods of any kind, not being the personal property of the crew in use during the voyage; and if any such place in any ship is not in the whole sufficiently large to give such space for each seaman and apprentice as hereinbefore required, or is not properly caulked and in all other respects securely and properly constructed and well ventilated, the owner shall, for every such failure to comply with the provisions of this Section, incur a penalty not exceeding two hundred Rupees; and if any such space as aforesaid is not kept free from goods and stores as aforesaid, the Master shall, for every such failure to comply with the provisions of this Section, incur a penalty not exceeding one hundred Rupees.

Place to be kept clear.

Penalty if place be not properly constructed.

Penalty for not keeping space clear.

LXXI. The Shipping Master at any Port in India, by himself or his deputy, may enter at any time on board of any ship upon which seamen have been shipped at such Port, and inspect the provisions and water provided for the use of the crew, and the medicines and appliances and the accommodation for seamen prescribed by this Act or by the Merchant Shipping Act 1854. If on inspection the provisions or water are found to be of bad quality and unfit for use or to be deficient in quantity, the Shipping Master shall proceed as provided in Section LXIV. of this Act, and the penalty prescribed in the said Section shall be incurred by any default of the Master of the ship in respect of such provisions or water.

Shipping Master &c. may enter on board any ship and inspect provisions &c.

Procedure if provisions &c. are found to be of a bad quality.

POWER OF MAKING COMPLAINTS.

LXXII. If any seaman or apprentice, whilst on board any ship, states to the master that he desires to make complaint to a Magistrate against the master or any of the crew, the said master

Seamen to be allowed to go ashore to make complaint to a Magistrate.

shall, if the ship is then at a place where there is a Magistrate, so soon as the service of the ship will permit, and if the ship is not then at such a place, so soon after her first arrival at such a place as the service of the ship will permit, allow such seaman to go ashore, or send him ashore in proper custody, so that he may be enabled to make such complaint, and shall, in default, incur a penalty not exceeding one hundred Rupees.

PROTECTION OF SEAMEN FROM IMPOSITION.

Sale of and charge upon wages to be invalid.

LXXIII. No wages due or accruing to any seaman or apprentice shall be subject to attachment from any Court; and every payment of wages to a seaman shall be valid in law, notwithstanding any previous sale or assignment of such wages or of any incumbrance thereon; and no assignment or sale of such wages, or of salvage made prior to the accruing thereof, shall bind the party making the same; and no power of attorney or authority for the receipt of any such wages or salvage shall be irrevocable.

No debt exceeding three Rupees recoverable till end of voyage.

LXXIV. No debt exceeding in amount three Rupees incurred by any seaman after he has engaged to serve shall be recoverable until the service agreed for is concluded.

Penalty for overcharges by lodging-house-keepers.

LXXV. If any person demands or receives from any seaman or apprentice payment in respect of his board or lodging in the house of such person for a longer period than such seaman or apprentice has actually resided or boarded therein, he shall incur a penalty not exceeding one hundred Rupees.

Penalty for detaining seamen's effects.

LXXVI. If any person receives or takes into his possession or under his control any monies, documents, or effects of any seaman or apprentice, and does not return the same or pay the value thereof when required by such seaman or apprentice, subject to such deduction as may be justly due to him from such seaman or apprentice in respect of board or lodging or otherwise, or absconds therewith, he shall incur a penalty not exceeding one hundred Rupees; and any Magistrate may, besides inflicting such penalty by summary order, direct the amount or value of such monies, documents, or effects, subject to such deduction as aforesaid, to be forthwith paid to such seaman or apprentice.

Persons not to go on board before the final arrival of ship without permission.

LXXVII. Every person who, not being in the service of Her Majesty and not being duly authorized by law for the purpose, goes on board any ship about to arrive at the place of her destination, before her actual arrival at the place of her discharge, without the permission of the master, shall for every such offence incur a penalty not exceeding two hundred Rupees; and the master or person in charge of such ship may take any such person so going on board as aforesaid into custody, and deliver him up forthwith to any Police Officer, to be by him taken before a Magistrate to be dealt with according to the provisions of this Act.

Penalty for solicitations by lodging-house-keepers.

LXXVIII. If, within twenty-four hours after the arrival of any ship at any Port in India, any person then being on board such ship solicits any seaman to become a lodger at the house of any person letting lodgings for hire, or takes out of such ship any effects of any seaman, except under his personal direction and with the permission of the Master, he shall for every such offence incur a penalty not exceeding fifty Rupees.

DISCIPLINE.

Penalty for misconduct endangering ship or life or limb.

LXXIX. Any Master of, or any seaman or apprentice belonging to any ship registered at, trading with, or being at any Port or place in India, who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediatley to endanger the life or limb of any person belonging to or on board of such ship, or who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits, to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall for every such offence be liable to imprisonment, with or without hard labor, for a term not exceeding two years.

LXXX. Any Court having Admiralty jurisdiction in India

Admiralty Court in India may in certain cases remove Master and appoint a new Master.

may, upon application by the owner of any ship being within the jurisdiction of such Court, or by the part owner or consignee, or by the agent of the owner, or by any certificated Mate, or by one-third or more of the crew of such ship, and upon proof on oath to the satisfaction of such Court that the removal of the Master of such ship is necessary, remove him accordingly; and may also, with the consent of the owner or his agent, or the consignee of the ship, or if there is no owner or agent of the owner or consignee of the ship within the jurisdiction of the Court, then without such consent, appoint a new Master in his stead, and may also make such order and may require such security in respect of costs in the matter as it thinks fit.

Power to investigate cases of alleged incompetency and misconduct.

LXXXI. If the local Government, on the information of any Shipping Master or on any other ground, has reason to believe that any Master or Mate who has obtained a certificate of competency or service from such Government, is from incompetency or misconduct unfit to discharge his duties, it may direct any Board or Officer at or near to the place at which it may be convenient for the parties and witnesses to attend, to institute an investigation; and thereupon such Board or Officer shall conduct the investigation, and may summon the Master or Mate to appear, and shall give him full opportunity of making a defence either in person or otherwise, and shall, for the purpose of such investigation, have all the powers vested in Magistrates of summoning and examining witnesses, and may make such order with respect to the costs of such investigation as they may deem just, and shall on the conclusion of the investigation make a report upon the case to the local Government.

Local Government may cancel or suspend certificates in certain cases.

LXXXII. The local Government may suspend or cancel the certificate (whether of competency or service) granted under this Act to any Master or Mate in the following cases; (that is to say)—

1. If upon any investigation made in pursuance of the last preceding Section, he is reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness, or tyranny.

2. If upon any investigation conducted under the provisions of Sections C. CI. and CII. of this Act, it is reported that the loss or abandonment of or serious damage to any ship, or loss of life, has been caused by his wrongful act or default.

3. If upon any investigation conducted under the provisions of the Merchant Shipping Act 1854, or upon any investigation made by a Naval Court constituted as is provided by the said Act or any other law for the time being in force, or upon any investigation made by any Court or tribunal authorized or hereafter to be authorized by the Legislative Authority in any British possession to make enquiry into charges of incompetency or misconduct on the part of Masters or Mates of the ships or as to ship-wreck or other casualties affecting ships, it is reported that the loss or abandonment of, or serious damage to any ship, or loss of life, has been caused by his wrongful act or default or that he has been guilty of any gross act of misconduct, drunkenness, or tyranny. Provided always that, in the case of any report by any such last mentioned Court or tribunal, the report shall have been confirmed by the Governor or person administering the Government of such possession.

4. If he is superseded by the order of any Admiralty Court or of any Naval Court constituted as is provided by the Merchant Shipping Act 1854 or any other law for the time being in force.

5. If he is shown to have been convicted of any offence.

And every Master or Mate whose certificate is cancelled or suspended shall deliver it to the Shipping Master or to such other person as the local Government shall direct, and in default shall for each offence incur a penalty not exceeding five hundred Rupees; and the local Government may at any subsequent time grant to any person whose certificate has been cancelled, a new certificate of the same or of any lower grade.

Offences of seamen and apprentices and their punishments.

LXXXIII. Whenever any seaman who has been lawfully engaged, or any apprentice to the sea-service, commits any of the following offences, he shall be liable to be punished summarily as follows: (that it is to say)—

Desertion.

1. For desertion he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labor, and also to forfeit all or

any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments which he has then earned, and also if such desertion takes place at any Port or place not in India, at the discretion of the Court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to any Port or Place in India, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts, to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him.

Neglecting or refusing to join, or to proceed to sea, absence within twentyfour hours before sailing, and absence without leave.

2. For neglecting or refusing without reasonable cause to join his ship or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of the ship's sailing from any Port either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty not amounting to desertion or not treated as such by the master, he shall be liable to imprisonment for any period not exceeding ten weeks, with or without hard labor, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding the amount of two days' pay, and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute.

Quitting without leave before ship is secured.

3. For quitting the ship without leave after her arrival at her Port of delivery and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay.

Act of disobedience.

4. For wilful disobedience to any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labor, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding two days' pay.

Continued disobedience.

5. For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labor, and also at the discretion of the Court, to forfeit for every twenty-four hours' continuance of such disobedience or neglect, either a sum not

exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute.

Assault on Officers.

6. For assaulting any master or mate he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labor.

Combining to disobey.

7. For combining with any other or others of the crew to disobey lawful commands, or to neglect duty or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labor.

Wilful damage and embezzlement.

8. For wilfully damaging the ship, or embezzling or wilfully damaging any of her stores or cargo, he shall be liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the Court, to imprisonment for any period not exceeding twelve weeks, with or without hard labor.

Act of smuggling causing loss to Owner.

9. For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the Master or Owner, he shall be liable to pay to such Master or Owner such a sum as is sufficient to re-imburse the Master or Owner for such loss or damage; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of such liability, without prejudice to any further remedy.

Entry of offences to be made in official log, and to be read over or a copy given to the offender, and his reply, if any, to be also entered.

LXXXIV. Upon the commission of any of the offences enumerated in the last preceding Section, an entry thereof shall be made in the official log book, and shall be signed by the Master and also by the Mate or one of the crew; and the offender, if still in the ship, shall before the next subsequent arrival of the ship at any Port, or if she is at the time in Port before her departure therefrom, either be furnished with a copy of such entry or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit; and a statement that a copy of the said entry has been so furnished, or that the same has been so read over as aforesaid, and the reply (if any) made by the offender, shall likewise be entered and signed in manner aforesaid; and in any

subsequent legal proceeding, the entries hereinbefore required shall, if practicable, be produced or proved, and in default of such production or proof, the Court hearing the case may, at its discretion, refuse to receive evidence of the offence.

Seamen whom masters of ships are compelled to convey, and persons going in ships without leave, to be subject to penalties for breach of discipline.

LXXXV. Every seafaring person whom the master of any ship is, under the authority of this Act or any law, compelled to take on board and convey, and every person who goes to sea in any ship without the consent of the master or owner or other person entitled to give such consent, shall, so long as he remains in such ship, be subject to the same laws and regulations for preserving discipline, and to the same penalties and punishments for offences constituting or tending to a breach of discipline, to which he would be subject if he were a member of the crew and had signed the agreement.

Master or owner may apprehend deserters without warrant.

LXXXVI. Whenever, either at the commencement or during the progress of any voyage, any seaman or apprentice neglects or refuses to join, or deserts from, or refuses to proceed to sea in any ship in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master or any mate, or the owner, ship's husband, or consignee, may, with or without the assistance of Police Officers, who are hereby directed to give the same if required, apprehend him without first procuring a warrant; and may thereupon in any case, and shall, in case he so requires and it is practicable, convey him before some Court capable of taking cognizance of the matter, to be dealt with according to law; and may, for the purpose of conveying him before such Court, detain him in custody for a period not exceeding twenty-four hours or such shorter time as may be necessary, or may, if he does not so require, or there is no such Court at or near the place, at once convey him on board; and if any such apprehension appears to the Court before which the case is brought, to have been made on improper or on insufficient grounds, the master, mate, owner, ship's husband, or consignee, who makes the same or causes the same to be made, shall incur a penalty not exceeding two hundred Rupees; but such penalty, if inflicted, shall be a bar to any action for false imprisonment in respect of such apprehension.

Deserters may be sent on board in lieu of being imprisoned.

LXXXVII. Whenever any seaman or apprentice is brought before any Court on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such Court may, if the master or the Owner or his agent so requires, instead of committing the offender to prison, cause him to be conveyed on board for the purpose of proceeding on the voyage, or deliver him to the Master or any mate of the ship, or the owner or his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the Master or owner by reason of the offence, to be paid by the offender, and if necessary to be deducted from any wages which he has then earned, or which by virtue of his then existing engagement he may afterwards earn.

Seaman imprisoned for desertion or breach of discipline may be sent on board before termination of sentence.

LXXXVIII. If any seaman or apprentice is imprisoned on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline, and if during such imprisonment and before his engagement is at an end his services are required on board his ship, any Magistrate may, at the request of the Master or of the owner or his agent, cause such seaman or apprentice to be conveyed on board his said ship for the purpose of proceeding on the voyage, or to be delivered to the Master or any Mate of the ship or to the Owner or his agent, to be by them so conveyed, notwithstanding that the termination of the period for which he was sentenced to imprisonment has not arrived.

Entries and certificates of desertion abroad to be copied, sent home, and admitted in evidence.

LXXXIX. In all cases of desertion from any ship registered at a Port or place in India while such ship is at any place out of India, the Master shall produce the entry of such desertion in the official log-book to the person or persons required by the Merchant Shipping Act 1854 to endorse on the agreement a certificate of such desertion; and such person or persons shall thereupon make and certify a copy of such entry

and also a copy of the said certificate of desertion; the master shall forthwith transmit such copies to the Shipping Master at the Port where such seaman was engaged, who shall, if required, cause the same to be produced in any legal proceeding; and such copies, if purporting to be so made and certified as aforesaid, shall in any legal proceeding relating to such desertion be received as evidence of the entries therein appearing.

Facilities for proving desertion so far as concerns forfeiture of wages.

XC. Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion, it shall be sufficient for the party insisting on the forfeiture to show that such seaman or apprentice was duly engaged in or that he belonged to the ship from which he is alleged to have deserted, and that he quitted such ship before the completion of the voyage or engagement, or if such voyage was to terminate at any Port or place in India, and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log-book; and thereupon the desertion shall, so far as relates to any forfeiture of wages or emoluments under the provisions hereinbefore contained, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge or can otherwise show to the satisfaction of the Court that he had sufficient reasons for leaving his ship.

Costs of procuring imprisonment may, to the extent of thirty Rupees, be deducted from wages.

XCI. Whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has in the course of the voyage been convicted of any offence by any competent tribunal and rightfully punished therefore by imprisonment or otherwise, the Court hearing the case may direct a part of the wages due to such seaman, not exceeding thirty Rupees, to be applied in re-imbursing any costs properly incurred by the Master in procuring such conviction and punishment.

Amount of forfeiture how to be ascertained when seamen contract for the voyage.

XCII. Whenever any seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be taken to be an amount bearing the same proportion to the whole wages or share as the period

hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage; and if the whole time spent in the voyage does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

XCIII. All clothes, effects, wages and emoluments which under the provisions hereinbefore contained are forfeited for desertion, shall be applied in the first instance in or towards the re-imbursement of the expenses occasioned by such desertion to the Master or owner of the ship from which the desertion has taken place, and may, if earned subsequently to the desertion, be recovered by such Master or by the owner or his agent in the same manner as the deserter might have recovered the same if they had not been forfeited; and in any legal proceeding relating to such wages, the Court may order the same to be paid accordingly; and, subject to such re-imbursement, the same shall be paid into the public Treasury and carried to the account of Government; and in all other cases of forfeiture of wages under the provisions hereinbefore contained, the forfeiture shall, in the absence of any specific directions to the contrary, be for the benefit of the Master or owner by whom the wages are payable.

Application of forfeitures.

XCIV. Any question concerning the forfeiture of, or deductions from the wages of any seaman or apprentice, may be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding that the offence in respect of which such question arises, though hereby made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

Questions of forfeitures may be decided in suits for wages.

XCV. If any seaman, on or before being engaged, wilfully and fraudulently makes a false statememt of the name of his last ship or last alleged ship, or wilfully and fraudulently makes a false statement of his own name, he shall incur a penalty not exceeding fifty Rupees, and such penalty may be deducted from any wages he may earn by virtue of such engagement as aforesaid, and shall, subject to re-imbursement of the loss and expenses (if any) occasioned by any previous desertion, be paid and applied in the same manner as other penalties payable under this Act.

Penalty for false statement as to last ship or name.

XCVI. Whenever any seaman commits an act of misconduct for which his agreement imposes a fine, and which it is intended to punish by enforcing such fine, an entry thereof shall be made in the official log-book, and a copy of such entry shall be furnished or the same shall be read over to the offender, and an entry of such reading over, and of the reply (if any) made by the offender, shall be made, in the manner and subject to the conditions hereinbefore specified with respect to the offences against discipline specified in and punishable under this Act; and such fine shall be deducted and paid over as follows (that is to say), if the offender is discharged at any Port or place in India, and the offence, and such entries in respect thereof as aforesaid, are proved, in the case of Foreign-going ship to the satisfaction of the Shipping Master before whom the offender is discharged, and in the case of a Home-trade ship to the satisfaction of the Shipping Master at or nearest to the place at which the crew is discharged, the Master or Owner shall deduct such fine from the wages of the offender and pay the same over to such Shipping Master; and if before the final discharge of the crew in India, any such offender as aforesaid enters into any of Her Majesty's ships or is discharged at any place not in India, and the offence and such entries as aforesaid are proved to the satisfaction of the Officer in command of the ship into which he so enters or of the Consular Officer, Officer of Customs or other person by whose sanction he is so discharged, the fine shall thereupon be deducted as aforesaid, and an entry of such deduction shall then be made in the official log-book (if any) and signed by such Officer or other person; and on the return of the ship to India, the Master or Owner shall pay over such fine, in the case of Foreign-going ships to the Shipping Master before whom the crew is discharged, and in the case of Home-trade ships to the shipping Master at or nearest to the place at which the crew is discharged; and if any Master or Owner neglects or refuses to pay over any such fine in manner aforesaid, he shall for each such offence incur a penalty not exceeding six times the amount of the fine returned by him; provided that no act of misconduct for which any such fine as aforesaid has been inflicted and paid shall be otherwise punished under the provisions of this Act.

Fines to be deducted from wages, and paid to Shipping Master.

XCVII. Every person who by any means whatever persuades

Penalty for enticing to desert and harbouring deserters.

or attempts to persuade any seaman or apprentice to neglect or refuse to join or to proceed to sea in or to desert from his ship, or otherwise to absent himself from his duty, shall for each offence in respect of each such seaman or apprentice incur a penalty not exceeding one hundred Rupees; and every person who wilfully harbours or secretes any seaman or apprentice who has deserted from his ship or who has wilfully neglected or refused to join or has deserted from his ship, knowing or having reason to believe such seaman or apprentice to have so done, shall for every such seaman or apprentice so harboured or secreted, incur a penalty not exceeding one hundred Rupees.

Penalty for obtaining passage surreptitiously.

XCVIII. Any person who secretes himself and goes to sea in any ship without the consent of either the Owner, Consignee, or Master, or of a Mate, or of any person in charge of such ship, or of any other person entitled to give such consent, shall incur a penalty not exceeding two hundred Rupees, or be liable to imprisonment, with or without hard labor, for any period not exceeding four weeks.

On change of Masters, documents hereby required to be handed over to successor.

XCIX. If during the progress of a voyage the Master of any ship registered at any Port or place in India is superseded or for any other reason quits the ship and is succeeded in the command by some other person, he shall deliver to his successor the various documents relating to the navigation of the ship and to the crew thereof which are in his custody; and shall in default incur a penalty not exceeding one thousand Rupees; and such successor shall, immediately on assuming the command of the ship, enter in the official log a list of the documents so delivered to him.

ENQUIRIES INTO WRECKS.

C. In any of the cases following, that is to say :—

Enquiry may be instituted in cases of wreck and casualty.

Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of India;

Whenever any ship causes loss or material damage to any other ship on or near such coasts;

Whenever, by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life ensues;

Whenever any such loss, abandonment, damage, or casualty happens elsewhere to or on board any ship registered at any Port or place in India, under the Merchant Shipping Act 1854 or under Act X. of 1841—it shall be the duty of any European Civil Officer of Government residing at or near the place where such loss, abandonment, damage, or casualty occurred, if the same occurred in India, but if elsewhere, at or near the place where such witnesses as aforesaid arrive or are found, to give notice of the same to the local Government. It shall be lawful for the local Government, whether such notice be given or not, if a formal investigation appears to it to be requisite or expedient, to appoint two persons to make the same. The investigation shall be held at such place as the local Government shall deem best for the convenient examination of the witnesses. One of the persons to be so appointed shall be a Magistrate acting in or near the place where the investigation is held; the other may be any person conversant with maritime affairs.

Investigation.

CI. The persons appointed shall proceed to make the investigation and shall for that purpose, so far as relates to compelling the attendance of witnesses, and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which such Magistrate has power to convict summarily, or as near thereto as circumstances admit.

Report.

CII. Upon the conclusion of the case the persons appointed to investigate shall send a report to the local Government, containing a full statement of the case and of their opinion thereon, accompanied by such report of or extracts from the evidence and such observations (if any) as they may think fit.

Official Logs.

Official logs to be kept in forms sanctioned by local Government.

CIII. An official log-book of every ship registered at any Port or place in India, except Home-Trade ships of a burden not exceeding three hundred tons, shall be kept in a form sanctioned by the local Government; and such official log may, at the dis-

cretion of the Master or Owner, either be kept distinct from the ordinary ship's log or united therewith, so that in all cases all the blanks in the official log be duly filled up.

Entries to be made in due time.

CIV. Every entry in every official log shall be made as soon as possible after the occurrence to which it relates, and if not made on the same day as the occurrence to which it relates shall be made and dated so as to show the date of the occurrence, and of the entry respecting it; and in no case shall any entry therein in respect of any occurrence happening previously to the arrival of the ship at her final Port of discharge be made more than twenty-four hours after such arrival.

Entries required in official log.

CV. Every Master of a ship for which an official log-book is hereby required shall make or cause to be made therein entries of the following matters, (that is to say):—

Convictions.

1. Every legal conviction of any member of his crew and the punishment inflicted.

Offence.

2. Every offence committed by any member of his crew for which it is intended to prosecute, or to enforce a forfeiture, or to exact a fine, together with such statement concerning the reading over such entry and concerning the reply (if any) made to the charge, as hereinbefore required.

Punishments.

3. Every offence for which punishment is inflicted on board, and the punishment inflicted.

Conduct &c. of crew.

4. A statement of the conduct, character, and qualifications of each of his crew, or a statement that he declines to give an opinion on such particulars.

Illness and injuries.

5. Every case of illness or injury happening to any member of the crew, with the nature thereof, and the medical treatment adopted (if any).

Deaths.

6. Every case of death happening on board, and of the cause thereof.

Births.

7. Every birth happening on board with the sex of the infant and the names of the parents.

Marriage.

8. Every marriage taking place on board with the names and ages of the parties.

9. The name of every seaman or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner, and cause thereof.

Quitting ship.

10. The amount of wages due to any seaman who enters Her Majesty's Service during the voyage.

Wages of men entering Navy.

11. The wages due to any seaman or apprentice who dies during the voyage, and the gross amount of all deductions to be made therefrom.

Wages of deceased seaman.

12. The sale of the effects of any seaman or apprentice who dies during the voyage, including a statement of each article sold and of the sum received for it.

Sales of deceased men's effects.

13. Every collision with any other ship and the circumstances under which the same occurred.

Collisions.

CVI. The entries hereby required to be made in official log-books shall be signed as follows, (that is to say), every such entry shall be signed by the Master and by the Mate or some other of the crew, and every entry of illness, injury, death, or birth shall be also signed by the surgeon or medical practitioner on board (if any); and every entry of wages due to, or of the sale of the effects of, any seaman or apprentice who dies shall be signed by the Master and by the Mate and some other member of the crew, and every entry of wages due to any seaman who enters Her Majesty's service, shall be signed by the Master and by the seaman or by the Officer authorized to receive the seaman into such service.

Entries how to be signed.

CVII. The following offences in respect of official log-books shall be punishable as hereinafter mentioned, (that is to say):—

Penalties, in respect of Official Logs.

1. If in any case an official log-book is not kept in the manner hereby required, or if any entry hereby directed to be made in any such log-book is not made at the time and in the manner hereby directed, the Master shall for each such offence incur the specific penalty herein mentioned in respect thereof, or where there is no such specific penalty, a penalty not exceeding fifty Rupees.

2. Every person who makes or procures to be made or assists in making any entry in an official log-book, in respect of any occurrence happening previously to the arrival of the ship at her

final Port of discharge in India, more than twenty-four hours after such arrival, shall for each such offence incur a penalty not exceeding three hundred Rupees.

3. Every person who wilfully destroys or mutilates or renders illegible any entry in any official log-book, or who wilfully makes or procures to be made or assists in making any false or fraudulent entry or omission in any such log-book, shall for each such offence be liable to imprisonment, with or without hard labor, for a term not exceeding one year.

Entries in official logs to be received in evidence.

CVIII. All entries made in any official log-book as hereinbefore directed shall be received in evidence in any proceeding in any Court of Justice, subject to all just exceptions.

Official logs to be delivered to Shipping Master.

CIX. The Master of every Foreign-going ship shall, within forty-eight hours after the ship's arrival at her final Port of destination in India, or upon the discharge of the crew, whichever first happens, deliver to the Shipping Master before whom the crew is discharged the official log-book of the voyage; and the Master or Owner of every Home-trade ship of a burden exceeding three hundred tons shall within twenty-one days after, the 30th day of June and the 31st day of December in every year, transmit or deliver to some Shipping Master in India the Official log-book for the preceding half year; and every Master or Owner who refuses or neglects to deliver his official log-book as hereby required, shall be subject to a penalty not exceeding two hundred Rupees.

Official logs to be sent Home in case of transfer of ship and in case of loss.

CX. If any ship ceases, by reason of transfer of ownership or change of employment, to fall within the operation of Section CIII. of this Act, the Master or Owner thereof shall, if such ship is then in any Port in India, within one month, and if she is elsewhere, within six months, deliver or transmit to the Shipping Master at the Port to which the ship belonged, the official log-book duly made out to the time at which she ceased to be within such operation, and in default shall for each offence incur a penalty not exceeding one hundred Rupees; and if any ship is lost or abandoned, the Master or Owner thereof, shall, if practicable, and as soon as possible, deliver or transmit to the Ship-

ping Master at the Port to which the ship belonged, the official log-book (if any) duly made out to the time of such loss or abandonment, and in default shall for each offence incur a penalty not exceeding one hundred Rupees.

Depositions to be received in evidence when witnesses cannot be produced.

CXI. Whenever, in the course of any legal proceeding instituted at any Port or place in India before any Judge or Magistrate or before any person authorized by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject matter of such proceeding, any deposition that such witness may have previously made in relation to the same subject matter before any Justice or Magistrate in Her Majesty's Dominions (including all parts of India other than those subject to the same local Government as the Port or place where such proceedings are instituted,) or any British Consular Officer elsewhere, shall, if authenticated by the signature of the Justice, Magistrate, or Consular Officer, be admissible in evidence on due proof that such witness cannot be found within the jurisdiction of the Court in which such proceedings are instituted. Provided that, if the proceeding is criminal, such deposition shall be admissible unless it was made in the presence of the person accused and the fact that it was so made is certified by the Justice, Magistrate, or Consular Officer. It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding, such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

Adjudication of offences on recovery of penalties.

CXII. All offences under this Act, made punishable by any penalty, may be prosecuted summarily before a Magistrate or any person exercising the powers of a Magistrate. The provisions of Act XIII. of 1856, relating to the adjudication of fines and penalties and the enforcing payment thereof, shall apply to penalties imposed under this Act in the Towns of Calcutta, Madras, and Bombay, and the Settlement of Prince of Wales' Isand, Singapore, and Malacca.

CXIII. In all cases where any Court or Magistrate has power

Wages, penalties, &c. payable by Master or Owner may be levied by distress of ship.

to make an order directing payment to be made of any seaman's wages, penalties, or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship and the same is not paid at the time and in manner prescribed in the order, the Court or Magistrate who made the order may, in addition to any other powers which such Court or Magistrate may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress and sale of the said ship, her tackle, furniture, and apparel.

Act not to extend to ships belonging to Her Majesty or to any Foreign Prince or State.

Or (except certain Sections) to ships belonging to the subjects of any Foreign Prince or State.

CXIV. Nothing in this Act shall extend to any ship belonging to or in the service of Her Majesty or to any ship belonging to any Foreign Prince or State; and nothing in this Act except as otherwise hereinafter provided, shall extend to any ship belonging to the subjects of any Foreign Prince or State.

Engagements between Masters of Foreign ships and lascars or native seamen.

CXV. When the Master of a Foreign ship being at any Port in India engages any lascar or other native seaman to proceed to any Port out of India, he shall enter into an agreement with such seaman, and the agreement shall be made before a Shipping Master in the manner hereinbefore provided for the making of agreements in the case of Foreign-going ships, and all the provisions of Sections XXI. and XXII. of this Act respecting the form of such agreements and the stipulations to be contained in them and the making and signing of the same, shall be applicable to the engagement of such seaman; and the Master of such Foreign ship shall give to the Shipping Master a bond with the security of some approved person resident in India for an amount calculated at the rate of one hundred Rupees for every such seaman and conditioned for the due performance of the said agreement and stipulations.

Fees payable in respect of such engagements.

CXVI. The fees prescribed in Section VI. of this Act shall be payable in respect of every such engagement, and deductions from the wages of seamen so engaged may be made to the extent and in the manner allowed by the said Section.

Penalty for Master of

CXVII. If any lascar or other native seaman is engaged by the Master of any Foreign ship otherwise

Foreign ship engaging native seamen otherwise than is allowed by two last preceding Sections.

than is allowed in the two last preceding Sections, such Master shall be liable to a penalty of one hundred Rupees for every such seaman as engaged. It shall be lawful for the Shipping Master, by himself or his deputy, to enter on board any Foreign ship upon which he shall have reason to believe that any such seaman has been shipped, and the provisions of Section XXX. of this Act shall be applicable in respect of every such ship.

Shipping Master may board Foreign ships suspected of unlawfully shipping native seamen.

Interpretation.

CXVIII. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, (that is to say);

"India."

The word "India" shall mean the Territories which are or may become vested in Her Majesty by the Statute 21 and by 22 Vic. c. 106, entituled "An Act for the better Government of India;" the expression "local Government" shall mean the person or persons for the time being immediately administering the Executive Government of any portion of the said territories.

"Local Government."

"Home-trade ship."

The expression "Home-trade ship," shall include every ship employed in trading between any Ports of the said territories; or between any Port of the said territories and any Port or place on the Continent of India or in the Island of Ceylon. The expression "Foreign-going ship" shall include every ship employed in trading between any Port of the said territories and any Port or place not in the said territories nor on the Continent of India nor in the Island of Ceylon. The word "Master" shall include every person (except a Pilot) having command or charge of any ship. The word "seaman" shall include every person (except Masters, pilots, and apprentices) employed or engaged in any capacity on board any ship. Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number. Words importing the masculine gender shall include females. The word "person" shall include a corporation.

"Foreign-going ship."

"Master."

"Seaman."

Number.

Gender.

"Person."

TABLE A.

Fees to be charged for matters transacted at Shipping Offices.

1. Engagement or discharge of crews.

						Rs.	As.	P.
In Ships under 100 Tons					..	3	0	0
From	100	to	200	,,	...	7	0	0
	200	to	300	,,	..	10	0	0
	300	to	400	,,	..	12	8	0
	400	to	500	,,	...	15	0	0
	500	to	600	,,	...	17	8	0
	600	to	700	,,	...	20	0	0
	700	to	800	,,	...	22	8	0
	800	to	900	,,	...	25	0	0
	900	to	1000	,,	..	27	8	0
	above		1000	,,	..	30	0	0

and so on for ships of larger tonnage, adding for every one hundred tons above one thousand, two Rupees and eight annas.

2. Engagement or discharge of seaman separately, one Rupee for each seaman.

TABLE B.

Sums to be deducted from wages by way of partial repayment of fees in Table A.

1. In respect of engagements and discharges of crews, upon each engagement and each discharge.

	Rs.	As.	P.
From wages of any Mate, Purser, Engineer, Surgeon, Carpenter, or Steward	0	12	0
From wages of all others except apprentices ..	0	8	0
2. In respect of engagements and discharges of seamen separately, upon each engagement and each discharge	0	8	0

NABOB OF THE CARNATIC.

ACT No. II. OF 1859.

[*Passed on the 5th February*, 1859.

Recites proceedings had under Act XXX. 1858 s. 14, and neglect of further proceedings.

1, 2, 3. Limit period for continuing such proceedings.

4, 5. Limits time for filing documents in support: (5) date of filing to be endorsed; and (7) no document to be received after time.

6. Solicitor to Government entitled to examine and take copies.

7. Ante.

8. Particulars under this Act, in place of under Act XXX. 1838.

9. Supreme Court to appoint day for hearing.

10. Proceedings to be as effectual as if under former Act.

11. How claimant may be barred if not appearing.

An Act to amend Act XXX. of 1858 (to provide for the administration of the Estate, and for the payment of the debts of the late Nabob of the Carnatic).

Preamble.

Whereas, in pursuance of the provisions of Section XIV. of Act XXX. of 1858, numerous declarations were filed in the Office of the Registrar of the Supreme Court of Judicature at Madras, within three months from the passing of the Act, by persons claiming to be creditors of the late Nabob of the Carnatic, but as yet, with very few exceptions, such persons have not made any application to the Court under the provisions of Section XIX. of the said Act, to appoint a day for ascertaining the amount of their debts, or furnished any particulars of their claims; and whereas, since the passing of the said Act, two of the seals formerly belonging to the said Nabob have been unlawfully taken away by some person or persons unknown and there is reason to believe that they have been feloniously stolen, and it is necessary, in order to guard against fraud, to limit the time within which particulars of the said claims shall be furnished, and to require all documents intended to be used in support thereof to be filed, and also to enable the Court upon the application of the Government of Madras to fix a day for the investigation of any of the said claims: It is enacted as follows:—

Time limited for filing particulars of claim, when declaration has been filed.

I. Every person who has filed a declaration under the provisions of Section XIV. of the said Act, shall file in the Office of the Registrar of the Supreme Court at Madras, full particulars of his claim with dates and items, within one week after the publication of this Act in the Fort St. George Gazette, or within such time, not exceeding one month after such publication, as may be allowed by the said Court or a Judge thereof, for any special reason which may appear to the said Court or Judge to be sufficient.

II. If the particulars filed as above provided be insufficient, the said Court or a Judge thereof may, upon an application on the part of Government, make an order for the filing, within a time to be specified in such order, of such further particulars as the said Court or Judge may consider necessary.

If particulars be insufficient, Court on application may order further particulars to be filed within a specified time.

III. If the particulars be not filed within the time limited by Section I. of this Act—or in the case of an order for further particulars under Section II. of this Act, if such further particulars be not filed within the time limited by the order—the said Court or a Judge thereof, upon an application on behalf of Government, shall make an order barring the claimant from proceeding under Section XIV. or any subsequent Section of Act XXX. of 1858, and from the benefits of the provisions of Section XXV. of the said Act; and in such case the claimant shall not be entitled to proceed under Section XIV. or any subsequent Section of the said Act, or to be paid under the provisions of Section XXV. of the said Act.

If particulars be not filed within the time limited, claimant to be barred from proceeding.

IV. Every person who has filed a declaration under the the provisions of Section XIV. of the said Act, shall file in the Office of the Registrar of the said Court, all documents intended to be used on the investigation in support of his claim (whether the same are intended to be used as independent or corroborative evidence or otherwise), within one week after the publication of this Act in the Fort St. George Gazette, or within such time, not exceeding one month from the time of such publication, as may be allowed by the said Court or a Judge thereof for any special reason which may appear to the said Court or Judge to be sufficient.

Time limited for filing documents to be used in support of claim.

V. Whenever the particulars of a claim or any document is filed under the provisions of this Act, a memorandum shall be made thereon of the date on which the same is filed.

Memorandum to be made on particulars of claim or documents of the date when they are filed.

VI. The Solicitor to Government, and such other persons as may be authorized by him, may examine and take copies of the particulars of any claim or of any document filed under the provisions of this Act.

Solicitor to Government may examine and take copies of particulars, &c.

VII. No document shall be admitted in evidence in support of any claim, or used by the claimant upon the investitgaion thereof under Section XXII. of the said Act, unless the same shall have been filed in the manner and within the time required by this Act; and upon every investigation under Sectoin XXII. of the said Act, the claimant shall be bound by the particulars of his claim, in the same manner and to the same extent as a plaintiff is bound by the particulars of his demand in an action brought in the said Court.

No document to be received in evidence in support of claim, unless filed as required by this Act.

Claimants to be bound by particulars filed.

VIII. Whenever particulars of a claim shall have been filed under the provisions of this Act, it shall not be necessary for the claimant to furnish particulars under Section XX. of the said Act.

If particulars of claim are filed under this Act, particulars under Act XXX. of 1858 not necessary.

IX. The Supreme Court of Judicature at Madras or a Judge thereof may, upon application on behalf of the Government of Madras, appoint a day for ascertaining the amount due to any of the persons who have filed a declaration under Section XIV. of the said Act, and in such case notice of the day so appointed shall be given to the claimant. The day so appointed shall not be less than twenty-one days from the time when the said application shall be made.

Supreme Court to appoint a day for ascertaining the amount due to any person who has filed a declaration under Act XXX. of 1858.

X. If the claimant shall appear on the day so fixed, or on any other day to which the Court may think fit to postpone the investigation, all such proceedings shall be had for ascertaining and determining the amount due to the claimant, and for payment of the amount so ascertained, as if the day for ascertaining the amount of the debt had been appointed upon the application of the claimant under Section XIX. of the said Act, except that it shall not be necessary for the claimant to furnish particulars under Section XX. of the said Act.

Proceedings if claimant appear on day fixed.

XI. If the claimant do not appear on the day fixed as provided by Section IX. of this Act, or upon the day to which the Court may postpone the investigation, the Court upon proof of service of the notice required by Section IX. of this Act, shall make an order barring the claimant from proceeding under Section XIV. or any subsequent Section of Act XXX. of 1858 and from the benefits

Proceedings if claimant do not appear on day fixed.

of the provisions of Section XXV. of the said Act; and in such case the claimant shall not be entitled to proceed under Section XIV. or any subsequent Section of the said Act, or to be paid under the provisions of Section XXV. of the said Act, unless within one week from such day, or within such time as the said Court or a Judge thereof shall appoint for investigating the excuse for not appearing, the Court shall be satisfied that he had a reasonable excuse for not appearing and shall fix another day for the hearing of his claim.

CANTONMENT JOINT MAGISTRATES. REGISTRARS.

ACT No. III. OF 1859.

[*Passed on the 7th February*, 1859.

Recites expediency of giving Cantonment Joint Magistrates Civil Jurisdiction and appointing them Registrars

1. Empowers the Governments to confer Civil Jurisdiction on Joint Magistrate of Cantonment Bazar. Jurisdiction to be in debt for 200 Rs. over persons subject to Articles of War for Native Army.

2, 3 Jurisdiction under this Act to supersede Courts of Requests, &c. and (3) in Madras and Bombay to supersede existing rules of trial.

4. Jurisdiction under this Act to exclude all other Jurisdiction.

5. Proceedings of Madras Punchayets not to be affected by this Act.

6. Traders not registered as Military Bazar men not entitled to sue.

7. Prescribes procedure.

8. Plaintiffs bringing false claims may be fined, &c.

9, 10, 11. Executive Governments may appoint Cantonment Joint Magitrates Registrar of Deeds (10) under existing rules (11) to be sworn into Office, &c.

An Act for conferring Civil jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting those Officers Registers of Deeds.

Preamble.

Whereas it is expedient that Cantonment Joint Magistrates should be invested with Civil jurisdiction in certain cases within the local limits of their Criminal jurisdiction, and that they should also be appointed Registers of Deeds within the same limits; It is enacted as follows:—

I. It shall be competent to the Governor General in Council

Executive Government may invest Cantonment Joint Magistrates with Civil Jurisdiction in certain cases.

and to the Executive Government of any Presidency or place to invest the Joint Magistrate of any Military Cantonment Bazar or Station, within the limits of their respective Governments, with Civil Jurisdiction. Every Joint Magistrate so invested shall have power to hear and determine actions of debt and other personal actions in which the value in question shall not exceed the sum of two hundred Rupees and which shall not involve any dispute of caste or any right of real property, against any person who at the time when the cause of action arose and at the time of the institution of the suit shall have been or shall be subject to the Articles of War for the Native Army or residing or carrying on trade or business within the limits of such Military Cantonment Bazar or Station, and not subject to any Articles of War made by Her Majesty.

Part of Act XI. of 1841 suspended in Cantonments where Joint Magistrates are so invested with Civil jurisdiction.

II. Whenever the Joint Magistrate of any Military Cantonment Bazar or Station shall be invested with Civil Jurisdiction under the provisions of the preceding Section, and so long as he shall remain so invested, so much of Act XI. of 1841 as authorizes the Commanding Officers of Stations or Cantonments to convene Military Courts of Requests for the trial of actions of debt and other personal actions as aforesaid, shall be suspended within the limits of such Cantonment Bazar or Station.

Also the Rules in force in the Madras and Bombay Presidencies for the trial of small suits in Military Bazars.

III. Whenever in either of the Presidencies of Madras or Bombay an Officer shall be invested with Civil jurisdiction as aforesaid, and so long as he shall remain so invested, the Rules for the trial of small suits in Military Bazars at Cantonments and Stations occupied by the Troops of those Presidencies respectively, shall cease to have effect within the jurisdiction of such Officer.

Persons amenable to the Articles of War for the Native Army, to be sued before Cantonment Joint Magistrates invested with Civil jurisdiction, and not elsewhere.

IV. Whenever the Joint Magistrate of any Military Cantonment Bazar or Station shall be invested with Civil jurisdiction under the provisions of this Act, no person amenable to the Articles of War for the Native Army who may be liable to be sued before such Joint Magistrate for any cause of action cognizable by him, shall be sued elsewhere.

V. Provided that nothing in the preceding Sections shall be held to alter or affect the Rules in force in the Madras Presidency for the trial by Punchayet of suits against Military persons belonging to that Presidency.

Saving of Rules in force in the Madras Presidency for the trial by Punchayet of suits against Military Persons.

VI. No person carrying on trade or business within the limits of any Military Cantonment, or who shall have carried on trade or business within any such limits, shall be allowed to recover in any Court held under this Act any debt contracted in the way of such trade or business or the loan of money within any such Cantonment, by any person subject to the jurisdiction of such Court, unless the person seeking to recover the debt shall, at the time of contracting the same, have been registered as a Military Bazar-man within such Cantonment.

Trader not to recover any debt unless Registered as a Military Bazar-Man.

VII. In cases instituted under the provisions of this Act, the plaintiff shall prefer his claim in writing to the Court of the Joint Magistrate having Jurisdiction over the same, and if the defendant be a Native Officer or Soldier or a Mustered Camp Follower, the summons to appear and answer to the claim shall be transmitted, for the purpose of being served on the defendant, to the Commanding Officer of the Corps or Detachment to which such defendant may belong; and the Commanding Officer shall return the summons to the Joint Magistrate, with the acknowledgment of the defendant endorsed thereon; or if the summons cannot be served, the reason of the non-service shall be stated. In other respects the rules of procedure and all other rules contained in Act XI. of 1841 *(for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons)* shall be applicable to such cases, and to the execution of the decrees passed therein, so far as the same are applicable: provided that the decisions of the Joint Magistrate in cases cognizable by him under this Act, shall not be open to revision or appeal: and provided further that it shall not be necessary to publish in Station Orders the decrees passed in such cases before they are carried into execution, and the Joint Magistrate passing the decree shall deter-

Procedure in cases tried under this Act.

No revision or appeal.

Execution of decrees.

mine whether the execution shall be general or special and shall proceed of his own authority with the execution.

Compensation may be awarded to a defendant if suit be groundless and instituted without probable cause.

VIII. If the claim of the plaintiff be dismissed, and it shall appear to the Joint Magistrate that the suit was groundless, and that there was no probable cause for instituting the same, it shall be competent to such Joint Magistrate to award against the Plaintiff in favor of the defendant, such sum as he may consider a reasonable compensation to the defendant for the loss of time and expense to which he may have been subjected by the institution of the suit against him and to proceed to recover the amount so awarded under the rules applicable to execution of decrees passed under this Act.

Cantonment Joint Magistrates may be appointed Registers of Deeds within the limits of their jurisdiction.

IX. It shall further be lawful for the Governor General in Council or for the Executive Government of any Presidency or place, to appoint the Joint Magistrate of any Military Cantonment Bazar or Station, subject to their respective Governments, Register of Deeds within the limits of such Cantonment Bazar or Station; and when such appointment is made, and so long as it shall continue in force, the powers of the Register of Deeds of the Zillah or District in which such Cantonment Bazar or Station is situate, shall be suspended within the limits thereof.

Rules applicable to Registers of Deeds to be applicable to Cantonment Joint Magistrates appointed Registers.

X. Whenever the Joint Magistrate of any Military Cantonment Bazar or Station shall be appointed Register of Deeds under this Act, all Rules for the time being in force applicable to Registers of Deeds, shall be applicable to such Joint Magistrate and to the Deeds registered by him, or brought to him for registry.

Oaths of office.

XI. Every Joint Magistrate who shall be invested with Civil jurisdiction or who shall be appointed Register of Deeds under the provisions of this Act, shall, previously to entering upon the performance of his duties, make and subscribe before the Chief Civil Officer, or, where there may be no Civil Officer, before the Chief Military Officer of the District or Zillah in which such Cantonment Bazar or Station is situate, the oaths required by law to be made and subscribed by Civil Judges and Registers of Deeds respectively, or the declarations substituted for such oaths.

REMOVAL OF CONVICTS.

ACT No. IV. OF 1859.

[*Passed on the* 10*th February*, 1859.

1, 3. Authorizes G. G. in C. or local Government with consent of G. G. in C. to remove convicts under sentence to more than three years' imprisonment &c. (3) Legalizes past removals

2. Limits Act to one year.

A Bill to make further provision for the removal of Prisoners.

Preamble.

Whereas, by the laws in force, the Executive Government of any Presidency or place is authorised to order the removal of any person under sentence of imprisonment, from the prison or place in which he is confined, to any other public prison or place of confinement within the same Presidency or Government; and whereas it is expedient to make temporary provision for the removal of prisoners in certain cases beyond the limits of the Presidency or Government in which the place where such prisoners are confined is situate: It is enacted as follows:—

Executive Government empowered to remove certain Prisoners beyond the limits of the Presidency or Government within which they are confined.

I. Whenever it shall be judged necessary or expedient that any person, who has been convicted of any offence and sentenced to imprisonment for life or for any term exceeding three years, should be removed to some place of confinement beyond the limits of the Presidency or Government within which he is confined, it shall be lawful for the Governor General in Council, or for the Executive Government of the Presidency or place with the sanction of the Governor General in Council, to order the removal of such person from the prison or place in which he is confined to any other prison or place of confinement within any part of the territories which are or may become vested in Her Majesty by the Statute 22 and 23 Vic. c. 106, entitled "An Act for the Government of India."

Duration of Act.

II. This Act shall continue in force for one year.

Past removals so made, legalized.

III. Any prisoner who, previously to the passing of this Act, shall have been removed in manner aforesaid from any prison or place of confinement to any

other prison or place of confinement in the said territories, shall be held to have been lawfully removed.

BEERBHOOM GHATWALEE TENURE.

ACT No. V. OF 1859.

[*Passed on the 4th March,* 1859.

Recites the nature of Ghatwalee tenure.

1. Entitles Ghatwals of Beerbhoom to lease Lands for mines and other specified purposes for longer times than their own lives with consent of Commissioner.

2. Same power given to Court of Wards and Commissioner as to Ghatwalee Lands in charge of Court of Wards.

An Act to empower the holders of Ghatwalee lands in the District of Beerbhoom to grant leases extending beyond the period of their own possession.

Preamble.

Whereas it has been held that the Ghatwals of the District of Beerbhoom who pay the revenue of their lands directly to Government under the provisions of Regulation XXIX. 1814 of the Bengal Code have not the power of alienating their lands; and whereas, for the development of the mineral resources of the country in which the said Ghatwalee lands are situate, and for the improvement of the said lands, it is expedient that the power of granting leases for periods not limited by the term of their own possession, should in certain cases be extended to the possessors of such lands; it is enacted as follows:—

Ghatwals of Beerbhoom to have the same right of granting leases as is allowed to other proprietors of lands.

I. Ghatwals holding lands in the District of Beerbhoom under provisions of the aforesaid Regulation, shall have the same power of granting leases for any period which they may deem most conducive to the improvement of their tenures, as is allowed by law to the proprietors of other lands. Provided that

Proviso.

on lease of Ghatwalee lands for any period extending beyond the life-time or incumbency of the grantor of the lease shall be valid and binding on the successors of the grantor, unless the same shall be granted for the working of mines or for the clearing of Jungle, or for the erection of dwelling houses or manufactories, or for tanks, canals,

and similar works; and shall be approved by the Commissioner of the Division, such approval being certified by an endorsement on the lease under the signature of the Commissioner.

Court of Wards and Revenue authorities to have the like power in certain cases.

II. If any of the said Ghatwalee lands be at any time under the superintendence of the Court of Wards, or otherwise subject to the direct control of the Officers of Government, it shall be lawful for the Court of Wards or the Commissioner to grant leases for any such purpose as aforesaid; and every lease so granted shall be valid and binding on all future possessors of the said lands, anything in the existing law to the contrary notwithstanding.

BOMBAY.--AHMEDABAD MAGISTRACY.

ACT NO. VI. OF 1859.

[*Passed on the 4th March*, 1859.

1. 2. Empowers G. of Bombay to appoint Magistrates and Assistant Magistrates for specified districts; but (2) reserving jurisdiction of Sessions Judge and Sudder F. A.

An Act to empower the Governor of Bombay in Council to appoint a Magistrate for certain Districts within the Zillah Ahamedabad.

Preamble.

Whereas it is expedient to provide specially for the Criminal and Police Administration of such portions of the Zillah Ahmedabad as are mentioned in the Schedule to this Act; It is enacted as follows:—

Governor in Council empowered to appoint a Magistrate for the Districts mentioned in Schedule.

Powers of Magistrate.

Examination of Districts from Jurisdiction of the Magistrate of Ahmedabad.

Assistants to the Magistrate.

I. It shall be lawful for the Governor of Bombay in Council to appoint a Magistrate for the Districts mentioned in the Schedule to this Act; and such Magistrate, when so appointed, shall exercise within the said Districts all the powers of a Magistrate as defined in the general Regulations of the Bombay Code and the Acts of the Legislative Council. Upon the appointment of a Magistrate under this Act, the said Districts shall be exempt from the Jurisdiction of the Magistrate of Ahmedabad. It shall also be lawful for the said Governor in Council to appoint so many Assistants to the said Magistrate as may be required.

II. Nothing contained in the preceding Section shall be held to remove the said Districts from the Jurisdiction of the Sessions Judge of Ahmedabad or of the Sudder Fouzdaree Adawlut.

Jurisdiction of the Session Judge of Ahmedabad and the Sudder Court.

SCHEDULE OF DISTRICTS.

[*See Section I.*]

Names of Villages under the Gogo Pergunnah.

1	Bhownuggur itself.	39	Sheehore.
2	Joona Wudwa.	40	Oosurud.
3	Rooha.	41	Soorka-Mota.
4	Ukwarra.	42	Agialee.
5	Udhewarra.	43	Tanah.
6	Tursumiya.	44	Khantree.
7	Malunka.	45	Turuckpalree.
8	Bhooteshur.	46	Dewgama.
9	Bhoobhulee.	47	Ruttunpoor, near Tanah.
10	Ruttunpoor-Joona.	48	Wudia.
11	Ruttunpoor-Nooa.	49	Wullawur.
12	Goondhee.	50	Megwuddur.
13	Koliak.	51	Ghangulee.
14	Hathub.	52	Nessura.
15	Khudsulioo.	53	Rajpoora, 2nd.
16	Bhudbhudioo.	54	Khakuria.
17	Alapoor.	55	Kurdej.
18	Thulsur.	56	Naree.
19	Iokunka.	57	Boodhel.
20	Khudurpoor and Meeteeveerdee.	58	Kobree.
		59	Bhuree.
21	Inspoora.	60	Bhundaria.
22	Mandwa.	61	Choodee.
23	Sonshiya.	62	Sankudasur.
24	Panialee.	63	Bharolee.
25	Trapuj.	64	Nagdhuneeba.
26	Buparra.	65	Surtanpoor.
27	Panchpeepla.	66	Wowree.
28	Rajpoora.	67	Thordee.
29	Bordee.	68	Rampoor.
30	Rajawuddur.	69	Soorka.
31	Wartej.	70	Sheddawuddur.
32	Phoolsur.	71	Jamballa.
33	Sondwudra.	72	Bhensowree, } Waste.
34	Phuriadka.	73	Kuchotia, } Waste.
35	Seedsur.	74	Cheerora, } Waste.
36	Kurmudia.	75	Janjra, } Waste.
37	Peethulpoor.	76	Kalvee, } Waste.
38	Shampoora.		

Names of Villages under the Dhumdooka Pergunnah.

1	Patna.	17	Kanoontulow.
2	Bhurbheer.	18	Woojulwow.
3	Chukumpoor.	19	Sandeda.
4	Ruttunwow.	20	Otariâ.
5	Keria.	21	Jotingra.
6	Jumrala.	22	Nagulpoor.
7	Sumundeala, 1st.	23	Sherthulee.
8	Karianee.	24	Dheckwallee.
9	Latheedhur.	25	Wajelee.
10	Surwuee.	26	Loundhurra.
11	Jhinjawuddur.	27	Malpura.
12	Pattee.	28	Dahturelia.
13	Keria near Pattee.	29	Welawuddur.
14	Bhanbhun.	30	Veerdee or Rajghur.
15	Sumundeala. 2nd.	31	Sujelee.
16	Tajpoor.		

Names of Villages under the Rampoor Pergunnah.

1	Botad.	6	Toorkha.
2	Hurdur.	7	Kamar.
3	Seerwania.	8	Rajpoora.
4	Dankunia.	9	Juria.
5	Khakhoee,		

CUSTOMS DUTIES.

ACT No. VII. OF 1859.

Passed on the 14*th March,* 1859.

1. Repeals, except as to Salt and Opium, Schedules A. and B. of Acts XIV. 1836 ; VI. 1844 ; IX. 1845 and I. 1852 and so much of s. 2, 3, and 4, of Act XXX. 1854, as relates to export and import duties.

2, 3. Extend all existing Customs regulations to new duties, and except free ports, and (3) exports of timber from Arracan, &c.

4. Entitles importers to charge the new duties to purchasers of goods not yet arrived or cleared.

5. Act to take effect from the 12th March.

Schedules A. Import duties, B. Export duties.

An Act to alter the Duties of Customs on goods imported or exported by sea.

Portions of Acts &c., repealed.

I. From and after the 12th day of March 1859 inclusive, so much of Schedules A and B annexed to Act XIV. of 1836, so much of Schedules A and B

annexed to Act VI. of 1844, so much of the Schedule annexed to Act IX. of 1845, so much of Schedules A and B annexed to Act I. of 1852, and so much of Sections II, III, and IV. Act XXX. of 1854, as prescribe the rates of duty to be charged on goods imported into or exported from any Port in India by sea, except the Articles of Salt and Opium—are repealed.

Provisions of certain Acts to have reference to Schedules annexed to this Act.

II. From and after the 12th day of March 1859 inclusive, all the provisions now in force of the abovementioned Acts which have reference to the duties of Customs now charged and leviable on goods imported into or exported from any Port in India by sea, shall be taken to have reference to the duties of Customs prescribed in the Schedules annexed to this Act provided that nothing in this Act shall authorize the levy of duties of Sea Customs at any free Port or be deemed to effect the provisions of Acts VI. and VII. of 1848.

Proviso.

Exception.

III. Nothing in this Act shall apply to Teak Timber exported from the Arracan, Pegu, Martaban, and Tenasserim Provinces.

Contracts or agreements already made.

IV. And whereas contracts or agreements may have been made for the sale or delivery of goods on which increased or additional duties are imposed by this Act, and which contracts or agreements may have been made without reference to such increased duties, and thereby the several contractors may be materially effected—It is therefore further enacted that, if any person shall by virtue of any contract entered into before the passing of this Act be bound to deliver, at any time after the passing of this Act, goods hereby made liable to an increased or additional rate of duty, and shall upon the importation or exportation of any goods which he may deliver in performance of such contract, pay a rate of duty higher than that which was imposed by law on such goods at the time when the contract was entered into, every such person is hereby athorized and empowered to add to the price of such goods a sum equal to the difference between the duty paid under this Act, and the duty which would have been payable under the laws in force when the contract was entered into, and shall have the same remedy for the recovery of such sum as if the same had been part of the price agreed upon.

V. This Act shall take effect on and after the 12th day of March 1859; and every Collector of Customs and other Officer is hereby indemnified for anything done on or after that day in collecting or enforcing the Duties imposed by this Act or in otherwise carrying into effect the provisions hereof; and no action or other proceeding shall be maintained against any such Collector or other Officer in respect of anything so done.

When this Act shall take effect. Indemnity to Collectors.

SCHEDULE A.

Rates of duty to be charged on the following goods imported by sea into any Port of India not being a free Port.

1.	Bullion and Coin, ...	Free.
2.	Precious Stones and Pearls	,,
3.	Grain and Pulse	,,
4.	Horses and other living Animals.. ...	,,
5.	Ice..	,,
6.	Coal, Coke, Bricks, Chalk, and Stones (Marbles and wrought stones excepted)	,,
7.	Cotton Wool	,,
8.	Books	,,
9.	Machinery for the improvement of the communications and for development of the resources of the country ..	,,

And the Collector of Customs, subject to the general orders of the local Executive Government, shall decide what articles of machinery come within the above definition, and such decision shall be final in law.

10.	Cotton Thread Twist, and Yarn ..	5 per cent. *ad valorem.*
11.	Tea	20 ,,
12.	Coffee	20 ,,
13.	Tobacco and all preparations thereof	20 ,,
14.	Spices, including Cassia, Cinnamon, Pepper, Cloves, Nutmegs and Mace	20 ,,
15.	Haberdashery, Millinery, and Hosiery,	20 ,,

And the Collector of Customs, subject to the general orders of the local Executive Government, shall decide what articles

come within the above definition, and such decision shall be final in law.

16.	Grocery, Confectionery, and Oilman's Stores, ...	20 per cent. *ad valorem.*
17.	Provisions, Hams, and Cheeses.. ..	20 ,,
18.	Perfumery	20 ,,
19.	Jewellery, Plate, and Plated-ware ..	20 ,,
20.	Porter, Ale, Beer, Cider, and other similar fermented liquors.	4 annas the imperial gallon.
21.	Wines and Liqueurs.	2 Rupees the imperial gallon.
22.	Spirits	3 Rs. Ditto.

And the duty on Spirits shall be rateably increased as the strength exceeds London proof.

23.	All articles not included in the above enumeration	10 per cent. *ad valorem.*

SCHEDULE B.

Rates of Duty to be charged upon goods exported by sea from any Port in India not being a free Port.

1.	Bullion and Coin, ...	Free.
2.	Precious Stones and Pearls, ...	,,
3.	Books, Maps, and Drawings printed in India, ...	,,
4.	Horses and other living Animals, ..	,,
5.	Cotton Wool, ...	,,
6.	Sugar and Rum, ...	,,
7.	Spirits, ...	,,
8.	Tobacco and all preparations thereof,	,,
9.	Raw Silk, ...	,,
10.	Grain and pulse of all sorts, 2as. the..	Indian Maund.
11.	Indigo, ...	3 Rs. the Indian Maund.
12.	Lac Dye and Shell Lac, ...	4 per cent. *ad valorem.*
13.	All country articles not enumerated or named above, ...	3 per cent. *ad valorem.*

CIVIL PROCEDURE.

ACT No. VIII. OF 1859.

[*Passed on the 22nd March,* 1859.

Recites expediency of simplifying the Civil Procedure of Courts not established by Royal Charter.

1—15. JURISDICTION—(1) to extend to all civil suits, except contrary specially enacted, (2) and to suits already heard, &c. by competent Court: and (3) judgments to be revised &c. only as by this Act is provided. (4) No person to be exempt by reason of birth or descent. (5). Suits for land &c. to be brought in local Court: and other suits where cause of action arose, or defendant at time of suit resides, &c. (6) Suit to be instituted in Court of lowest grade competent to try it but may be removed by District Court or Sudder Court. (7) Cause of action not to be split, but part may be abandoned (8). Any number of causes of action may be joined but (9) Court may order separate trials. (10) Land and mesne profits separately recoverable. (11) Land in several local jurisdictions but within the district may be sued for by leave of district Court: or (12) by leave of Sudder Court where they are in different districts, or (13) if different Sudder Courts have jurisdiction, by leave of either with concurrence of other. (14) In suits for border lands, Court to decide if the lands are within its jurisdiction. (15) Suits may be for merely a declaratory order.

16—24. PRELIMINARY RULES.—(16). Appearance to be in person by pleader or agent; (17) who may be agents, and the effect of agency, (18) respecting appearance by pleaders; (19 and 20) respecting appearance of Officers or Soldiers; (21) women exempted from personal appearance; (22) Government may grant exemption to persons of rank. (23.) Expense of serving process to be borne by person issuing it. (24) False verification of plaint punishable as forgery.

25—40. INSTITUTION OF SUITS.—(25) Suits to be commenced by plaint; (26) what the plaint shall contain; (27) to be verified by plaintiff; and (28) in his absence how. (29) Consequence of defects in plaint; (30) plaint to be returned if value beyond jurisdiction, or (31) rejected if insufficiently stamped; or (32) for no valid cause; and (33) returned if brought in wrong Court. (34) Plaintiffs resident in India and not having land &c. in India, to give security for costs; and (35) sole Plaintiff non-resident may be required to give security at any stage &c. (36) Rejection of plaint appealable. (37) Rule in case of suit for land situate in several jurisdictions. (38) Plaint to be registerd in a book; and (39) when on document, document to be produced and copy filed. (40) Plaintiff may require from defendant copy of document.

41—46. THE SUMMONS—(41) to specify what; (42) and for what appear-

ance; and (43) for documents; (44) form of the Summons; (45) when returnable; (46) peculiar in suits against Company, &c.

47—72. ITS SERVICE.—(47) By whom; (48) how; (49) on whom; (50 and 51) on special agent; (52) on Government pleader for Government; (53 and 55) how, when defendant not found; (54, 56) duty of serving officer on service; (57) how when defendant keeps out of the way; (58) respecting substituted service; (59) how when defendant resident within another jurisdiction; how (60) when resident abroad: (61) respecting service in suits for immovable property; (62) when suit is against Government servant; (63) when against corporation. (64) Court may for Summons substitute letter, &c. (65) and send it by post; (66) registered. (67) How to be served in suit against Government; and (68) how against Government officers: and (69) Court may grant them time to refer to Government; and (70) if Government defends, Government pleader may appear, &c. or (71) on default suit to proceed; (72) appearance of public officer may be dispensed with.

73. PARTIES.—Parties may be added.

74—80. ARREST OF PERSON.—(74) Under what circumstances plaintiff may require security, and (75) warrant may be issued to arrest defendant; and (76) bail may be required; or (77) deposit in lieu of bail; or (78) defendant may be committed. (79) In case of vexatious proceedings for arrest, compensation may be given to defendant. (80) Provides for case of defendant about to leave India.

81—91. ATTACHMENT.—(81) Under what circumstances an attachment of property may be obtained. (82) Application for, what it shall specify; and (83 & 84) how Court shall proceed; (85) How to be made; and (86) adverse claims how to be dealt with; (87) Security may be taken in lieu of attachment. (88) Compensation may be given on vexatious application. (89) Effect of attachment. (90) Attachment may be stayed if suit frauddulent. (91) Respecting lands liable to be sold for arrears of revenue.

92—96. INJUNCTIONS.—(92) Under what circumstances injunction against waste, &c. may be obtained, and receiver &c. be appointed; and (93) injunctions against breach of contract &c. (94) Order for injunction appealable. (95) Proceedings on application for; and (96) if vexatiously applied for, compensation may be ordered.

97—98. WITHDRAWAL OF SUITS.—(97) Suits may be withdrawn by leave of Court; or (98) compromised and with what effect.

99—106. DEATH &c. OF PARTIES.—(99) Death of either party not to abate the suit but (100 & 101) representative of deceased may be made a party or not according to the nature of the interest. (102) If sole plaintiff dies, Court may abate suit &c., or (103) right to be admitted as representative, if disputed, to be tried. (104) Rules in case of death of defendant. (105) Marriage of female party not to abate suit. (106) Bankruptcy &c. of plaintiff to abate suit, unless assignee give security for costs.

107—108. NOTICES TO PRODUCE.—(107, 108). How to be served.

109—119. APPEARANCE AND NON-APPEARANCE.—(109) Hearing to be on day fixed for appearance; (110) if neither party appears suit to be dismissed, &c. or (111) if only plaintiff appears hearing may be *ex parte;* except (112) on case of non-proof of service of summons &c. or (113) of summons being not served in time. (114) If only defendant appears judgment by default to be given against plaintiff. (115) Joint parties may appear &c. for one another, &c. (116) or Court may proceed on appearance of some only. (117) Respecting parties who do not appear after order to appear; but (118) they may shew excuse. (119) *Exparte* judgments not appealable, but may be set aside and how, &c.

120—124. WRITTEN STATEMENTS.—(120) Parties may put in written statements. (121) Defendant, statement of set-off (122) when to be put in; and (123) how to be framed &c. (124) in regard to prolixity &c.

125—127. EXAMINATION OF PARTIES.—(125) Parties and pleaders may be examined; and (126) judgment may be given against party refusing to answer; and (127) party may be required if pleader refuses to answer.

128—138 DOCUMENTS.—(128) When to be produced; (129) may be rejected by Court; (130) defect of Stamp on to be received by payment of penalty; accounts of which (131) to be kept. (132) Exhibits to be marked; and (133) not liable to stamp duty; and (134) if rejected, retained and (135) if admitted kept where; except (136) in specified case; and (137) receipt for to be given, when returned. (138) Court may send for its own records.

139—143. SETTLEMENT OF ISSUE, AND ISSUES BY AGREEMENT.—(139) Court to frame Issues; and (140) make examination for purpose; and (141) may amend the Issues &c. or (142) Issues may be agreed by parties and (143) Court may give effect to agreement.

144—145. FIRST HEARING.—(144) Court may give judgment at once if parties not at issue, or (145) if they are at issue.

146—148. ADJOURNMENT.—(146) Court may adjourn hearing; and (147) decide on day of adjournment whether parties appear or not; or (148) produce evidence or not.

149—160. SUMMONING OF WITNESSES AND SERVICE OF SUMMONS.—(149) Court may summons witnesses. (150) Application for summons need not be stamped; (151) but expense of witness must be prepaid. (152) Summons shall specify what, and (153) if to produce document; (154) to be served how and when; and (155) on whom, and (156) returned, if not served; and (157) service, when made to be endorsed (158) Summons on witness how to be served. (159) If witness abscond, &c. his property may be attached; and (160) released on his appearance.

161—166. EXAMINATION OF PARTIES.—(161) Parties may be examined; (162) by order of Court; (163) unless cause shown to the contrary; (164) it may be shown in writing; but (165) if good cause not shown order to be made. (166) Court may examine parties for its own satisfaction.

167—171. ATTENDANCE OF WITNESSES.—(167) Witness bound to attend; and (168) in default of attending may be apprehended and (169) being present and refusing to give evidence &c., may be committed; and (170) refusing to produce document, Court may exercise its own discretion. (171) Any person in Court may be examined.

172—174. WITNESS WHEN AND HOW EXAMINED.—(172) To be examined at the hearing, in Court, orally, interpreted when, and when in English: questions when to be taken down: Judge to make abstract Notes of the evidence, or record his reason for not doing so. (173) Witness about to leave jurisdiction may be examined where, &c. (174) All witnesses to be examined on oath or affirmation.

175—182. COMMISSIONS TO EXAMINE WITNESSES.—(175) Witness at distance of more than 100 miles and in other specified cases may be examined under Commission. Commission to issue to whom; and (176) in Presidency towns to small Cause Courts, &c. (177) Commission to be issued by whom, and when by District Court; and (178) when by direction of Sudder Court. (179) Commission how to be returned, and on what condition evidence to be read. (180) Commission may be issued for a local investigation, and what should be done on return of it. (181) Commission may be appointed to investigate accounts. (182) Court may require deposit of costs of Commission from party requiring it.

183—198. JUDGMENT AND DECREE.—(183) Judgment to be pronounced in open Court, (184) in writing in vernacular of the Judge, or in English, and (185) shall contain what points; and (186) shall decide on every issue; and (187) award the costs at its discretion. (188) Costs are to include what, &c. (189) Decree shall contain what; (190) where the suit is for land, and (191) when for moveable Property; and (192) when for damages it may be for specific performance; and (193) if for money, it may give interest; and (194) time to pay by instalments; (195) if set-off allowed amount &c. to be decreed and balance stated for whichever party &c. and (196) in suits for land, mesne profits and interest on them may be decreed; or (197) inquiry into mesne profits may be reserved. (198). Parties entitled to certified copies of judgment and decree, &c.

199—206. EXECUTION OF DECREES.—(199) Land and (200) specific chattel to be delivered to whom adjudged; in other cases decree enforced by attachment of property &c. or (201) by attachment and sale of property or imprisonment against Government how: (202) how for execution of conveyance &c. (203) how against representatives of deceased persons; (204) against sureties as against their principals. (205) Describes the kinds of property which may be sold in satisfaction. (206) All money realized in satisfaction to be paid into Court.

207—220. APPLICATION FOR EXECUTION AND INCIDENTS.—(207) May be made by one of several decree-holders, or (208) by assignee of decree-holder and (209) Cross decrees may be set off against one another. (210) May be made against representative of deceased, and (211) executed against him

how. (212) Shall be in what form generally and (213) what, when intended against immovable property; (214) what, when against movable. (215) How the Court shall proceed in general, and (216) how if decree be more than a year old or enforcement be asked of heir &c. and (217) in case no cause against be shown. (218) Applicant may be required to give security to indemnify; and (219) execution debtor may be summond in same manner, (220) as if witness, &c.

221—222. ISSUE OF WARRANT.—(221, 222) What the warrant shall contain.

223—231. EXECUTION AGAINST IMMOVEABLE PROPERTY.—(223) To be by delivery in fact, or (224) by notice and proclamation subject to rights of occupancy. (225) To be how, if for division of an estate or share &c. (226). If obstructed, complaint may be made to Court; and (227) Court may make proper order; (228) and in specified cases may imprison defendant; or (229) if obstructor be *bona fide* claimant Court may investigate claim; and (230) may investigate claim of title set up for third parties: and (231) in two last cases, order appealable.

232—245. EXECUTION OF DECREE FOR MONEY.—(232) To be by attachment of property; (233) in what manner when goods &c. in possession of debtor; and (234) when in possession &c. of third person; (235) when lands, and (236) when debts &c. not negotiable; (237) when in deposit &c. in Court of Justice; (238) when negotiable instruments. (239) Notice of attachment by prohibitory order how to be given; (240) after which alienation to be void; and (241) debt may be paid in to Court; and (242) Court may dispose of property; or (243) may appoint a manager and raise money to mortgage; or (244) by other means on representation of Collector. (245) Attachment to be taken off, on satisfaction of decree.

246—247. OF CLAIMS TO ATTACHED PROPERTY.—(246) To be investigated and how; (247) unless delayed, &c.

248—272. OF SALES IN EXECUTION. (248) To be by public auction, or in case of shares &c. through brokers; and (249) after proclamation and how, and time when; and (250) attachment and sale may be under one order; (251) selling Officer may direct how payment shall be made, if sale be of goods; (252) sale not to be vitiated by irregularity; (253) deposit to be paid on immoveable property; (254) payment to be completed by 15th day, or resale to be made; and (255) on resale fresh notification to be made; (256) sale of immoveable property to require confirmation; and (257) if not confirmed deposit or price to be returned; (258) also if sale set aside; and (259) Certificate to be given to purchaser; and (260) in name of actual purchaser only; and (260) if sale of moveables, delivery to be given to purchaser; or (262) to be secured by notice, if lien exists; and (263) delivery to be given of immoveables, in possession of defendant; or (264) if in possession of ryots, change of interest to be notified; (265) how in case of shares in Companies, &c. (266) negotiable instruments to be delivered (267) with an endorsement

if necessary; (268) what shall be done, if execution be resisted, by defendant, and (269) what if resistance be by stranger; (270) execution to have priority in order of execution, not of judgment; (271) decreeholders without execution to come in rateably; (272) execution obtained by fraud may be applied to satisfy *bona fide* decree.

273—275. OF ARREST IN EXECUTION FOR MONEY.—(273) Discharge from may be obtained under what circumstances: (274) application how to be proceeded with: (275) discharge no protection if obtained by false statement.

276—283. EXECUTION BY IMPRISONMENT.—(276) Defendant entitled to subsistance money at what rate; which (277) may be varied in specified cases. (278) defendant to be released on satisfaction of debt, request of creditor, or default to pay subsistance money; (279) subsistance money to be added to decree: (280) defendant may be discharged on surrender of his property; (281) after inquiry (282) not to be subject to second arrest on same decree except in case of fraud, &c. (283) how reserved questions of interest &c. under decree are to be disposed &c. &c.

284—296. EXECUTION IN FOREIGN JURISDICTION.—(284) Decree may be executed in limits of other Jurisdiction; (285) by transmitting copy of decree &c. to foreign Court; (286) with order &c. for foreign Court to execute; (287) what foreign Court shall execute &c. (288) as a decree of its own; and (289) may punish wrongful acts &c. or (290) may in certain cases stay execution &c. for defendant to apply to original Court &c. (291) first taking security if it thinks proper; (292) after which, order of original Court to be final, (293) and defendant may be retaken; and (294) orders of foreign Court to be appealable; (295) execution in military Cantonments, how to be enforced; (296) and rules for execution of decrees to apply to execution of all Judicial orders.

297—311. PAUPER SUITS.—(297) Suits may be brought *in forma pauperis* in all the Courts; except (298) for loss of caste, slander, &c. (299) Permission to be obtained by petition on stamped paper, (300) containing what particulars; (301) to be presented in person except by permission of Court and in case of female; otherwise (302) to be rejected; (303) petitioner to be examined as to merits of claim &c.; and (304) rejected on what gounds; (305) if not rejected, defendant to be summoned, &c.; (306) decide on the petition after cause shown; (307) local enquiry may be ordered; (308) if granted, petition to stand for plaint &c. (309) stamps to be debited in suit &c. (310) refusal of petition not to bar right to sue; (311) orders on petition not appealable.

312—327. REFERENCE TO ARBITRATION.—(312) Parties may obtain leave to refer to arbitration; (313) application to be made, how; (314) arbitrators to be named by parties &c. (315) order of reference to describe the matters referred; and (316) provide for umpirage; (317) arbitrators to have what powers; (318) Court may enlarge time for making award &c. and (319) in

case of death &c. may appoint new arbitrators; (320) award to be submitted to Court with documents &c. and (321) arbitrator may state special case for opinion of Court; and (322) may alter award &c. or (323) in specified cases refer it back; and (324) award to be set aside, except for corruption or misconduct of arbitrators; and (325) Court, except in excepted cases, to give judgment according to award &c. and (326) agreement to refer any differences without suit may be made rule of Court and enforced &c. also (327) award without previous rule of Court may be enforced by Court.

328—331. PROCEEDINGS ON AGREEMENTS OF PARTIES.—(328) Issues may be received for opinion of Court; (329) how to be filed; (330) filing to give Court Jurisdiction; and (331) how to be heard, &c.

332—337. APPEALS.—(332) Gives an appeal, (333) limits time and prescribes form, (334, 5, 6,) further rules respecting forms; (337) gives right to one of several parties to appeal.

338—340. STAYING EXECUTION FOR APPEAL.—(338) Execution not to be stayed except for special cause shown; (339) and on stay, securities may be required; (340) except from Government.

341—362. PROCEDURE IN APPEALS.—(341) Appeal how to be entered; (342) security may be required from appellant; (343) admission of appeal to be notified to lower Court; (344) Day to be fixed for hearing; (345) of which notice to be given; (346) may be dismissed for default of appearance; (347) may be re-admitted, (348) respondent may object to lower Court's decision as well as appellant; (349) Court how to give judgment; (350) judgment not to be reversed for irregularity; (351) case may be remanded; (352) when it may not be remanded: (353) appellate Court not confined to grounds of Lower Court; (354) Appellate Court may direct trial; (355) or call for fresh evidence; (356) to be taken, how; (357) and how limited: (358) general powers of Appellate Court; (359) Court to give judgment in what language; and (360) what the decree is to contain; (361) how to be certified to Lower Court; (362) judgment of, how to be executed.

363—366. APPEALS FROM ORDERS. (363) No appeal from interlocutory order; (364) nor for orders relating to execution; (365) but orders for fines &c. appealable; (366) appeal from, to be as in other cases.

367—371. APPEALS IN FORMA PAUPERIS.—(367) Parties unable to pay stamp duties may appeal *in forma pauperis;* (368) on leave, and how to be applied for; and (369) in what form; (370) to be proceeded with, how; and (371) effect of order.

372—375. SPECIAL APPEALS.—(372) Grounds on which they may be brought; (373) Leave of S. Court must be given (374) and application must set forth grounds (375) and may be rejected if in wrong form.

376—380. REVIEW OF JUDGMENT.—(376) On what grounds review may be obtained, and (377) within what time; (378) refusal of, final (379) to what Judges in the Sudder, and (380) how to be proceeded with.

381—388. MISCELLANEOUS.—(381) Empowers Sudder Court to make

rules of practice. (382) Act not to extend to Supreme and Presidency Small Cause Courts. (383) Saves Jurisdiction &c. of Moonsiffs and village Punchayets in Madras, and of specified Military tribunals and punchayets and (384) certain specified Jurisdictions; (385) and Act not to extend to non-regulation parts till extended thereto; (386) interprets words &c. (387) Act to commence from 1st July 1859 in Bengal, and 1st January 1860, in Madras; and (388) to supersede all other procedure. SCHEDULES A. B. C. and D.

An Act for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.

Preamble.

Whereas it is expedient to simplify the Procedure of the Courts of Civil Judicature not established by Royal Charter, It is enacted as follows :—

CHAPTER I.

OF THE JURISDICTION OF THE CIVIL COURTS.

Civil Courts have cognizance of all suits unless specially barred.

I. The Civil Courts shall take cognizance of all suits of a Civil nature, with the exception of suits of which their cognizance is barred by any Act of Parliament, or by any Regulation of the Codes of Bengal, Madras and Bombay respectively, or by any Act of the Governor General of India in Council.

Unless suits previously heard and determined.

2. The Civil Courts shall not take cognizance of any suit brought on a course of action which shall have been heard and determined by a Court of competent jurisdiction in a former suit between the same parties or between parties under whom they claim.

Revision of judgment of the Civil Courts.

3. The judgments of the Civil Courts shall not be subject to revision, otherwise than by those Courts under the rules contained in this Act applicable to reviews of judgment, and by the constituted Courts of Appellete Jurisdiction.

No person excepted from jurisdiction, by reason of place of birth or of descent.

4. No person whatever shall, by reason of place of birth, or by reason of descent, be in any Civil proceeding whatever excepted from the jurisdiction of any of the Civil Courts.

Jurisdiction Civil Courts.

5. Subject to such pecuniary or other limitations as are or shall be prescribed by any law for the time being in force, the Civil Courts of each grade shall receive, try, and determine all suits hereby declared to be

cognizable by those Courts, if in the case of suits for land or other immovable property such land or property shall be situate within the limits to which their respective jurisdictions may extend, and in all other cases if the cause of action shall have arisen, or the defendant at the time of commencement of the suit shall dwell, or personally work for gain, within such limits.

Court in which suit to be instituted.

Transfer of suits.

6. Every suit shall be instituted in the Court of the lowest grade competent to try it. But it shall be lawful for the District Court to withdraw any suit instituted in any Court subordinate to such District Court and to try such suit itself or to refer it for trial to any other Court subordinate to its authority and competent in respect of the value of the suit to try the same, whenever it may see sufficient cause for so doing. In like manner the Sudder Court may order that the cognizance of any suit or appeal which may be instituted in any Court subordinate to such Sudder Court shall be transferred to any other Court subordinate to its authority and competent in respect of the value of the suit or appeal to try the same.

Suit to include the whole claim.

Relinquishment of part of claim.

7. Every suit shall include the whole of the claim arising out of the cause of action, but a Plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. If a plaintiff relinquish or omit to sue for any portion of his claim, a suit for the portion so relinquished or omitted, shall not afterwards be entertained.

Joinder of causes of action in the same suit.

8. Causes of action by and against the same parties, and cognizable by the same Court, may be joined in the same suit, provided the entire claim in respect of the amount or value of the property in suit do not exceed the jurisdiction of such Court.

Court may in certain cases order separate trials of such causes of action.

9. If two or more causes of action be joined in one suit, and the Court shall be of opinion that they cannot conveniently be tried together, the Court may order separate trials of such causes of action to be held.

Claim for recovery of land and for mesne profits to be deemed distinct causes of action.

10. A claim for the recovery of land and a claim for the mesne profits of such land shall be deemed to be distinct causes

of action within the meaning of the two last preceding Sections.

Suits for immovable property situate within different jurisdictions of the same District.

11. If the suit be for land or other immovable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be brought in the Court within the jurisdiction of which any portion of such land or other immovable property is situate, provided the entire claim in respect of the value of the property in suit be cognizable by such Court; but in such case the Court in which the suit is brought shall apply to the District Court for authority to proceed with the same.

Suits for immovable property situate in different District.

12. In like manner, if the property be situate within the limits of different Districts, the suit may be brought in any Court, otherwise competent to try it within the jurisdiction of which any portion of the land or other immovable property in suit is situate, but in such case the Court in which the suit is brought shall apply to the Sudder Court for authority to proceed with the same; if the suit is brought in any Court subordinate to a District Court, the application shall be submitted through the District Court to which such Court is subordinate.

Suits for immovable property situate in Districts subject to different Sudder Courts.

13. If the Districts within the limits of which the property is situate, are subject to different Sudder Courts, the application shall be submitted to the Sudder Court to which the District, in which the suit brought, is subject; and the Sudder Court to which such application is made, may, with the concurrence of the Sudder Court to which the other District is subject, give authority to proceed with the same.

Suit for land situate on the borders of the Court's local jurisdiction and alleged by the defendant to be within another local jurisdiction.

14. If, in a suit for land situate on the borders of the Court's local jurisdiction, the defendant object to the hearing of the suit on the ground that the land is not included within the local jurisdiction of the Court, the Court shall have power to determine the point; and if the Court shall find that the land is included within its local jurisdiction, it shall proceed to try the suit.

Proviso.

Provided that, if it be shown that the land in dispute has been adjudged by competent authority to belong to an estate, village, or other

known division of land situate within the local jurisdiction of another Court, the Court in which the suit is brought shall reject the plaint, or return it to the plaintiff in order to its being presented in the proper Court.

Declaratory suit.

15. No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Civil Courts to make binding declarations of right without granting consequential relief.

CHAPTER II.

PRELIMINARY RULES.

Parties may appear in person or by recognized agent or by pleader.

16. All applications to any Civil Court, and all appearances of parties in any Civil Court, except when otherwise specially provided by this Act, shall be made by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf.

Recognized agents.

17. The recognized agents of parties by whom such applications and appearances may be made are.—

Persons holding powers of attorney.

1st. Persons holding general powers of attorney from parties not within the jurisdiction of the Court, authorizing them to make such applications and appearances on behalf of such parties.

Persons carrying on trade or business for absent persons.

2ndly. Persons carrying on trade or business for and in the name of parties not within the jurisdiction of the Court in matters connected with such trade or business only, where no other agent is expressly authorized to make such applications or appearances.

Persons authorized to act for Government.

3rdly. Persons being ex-officio or otherwise authorized to act for Government in respect of any suit or judicial proceeding.

Persons specially appointed to persecute a suit for any Sovereign Prince.

4thly. Persons specially appointed by order of Government at the request of any Sovereign Prince, or Independent Chief, whether residing within or without the British Territories, to prosecute or defend a suit on his behalf.

Whenever the personal appearance of a party to a suit is re-

Acts required to be done by a party to a suit in person may be done by his recognized agent.

quired by this Act, such appearance may be made by his recognized agent, unless the Court shall otherwise direct; and any thing which by this Act is required or permitted to be done by a party in person may be done by his recognized agent. Notices given

Service of notice &c. on recognized agents.

to or processes served on a recognized agent relative to a suit shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct; and all the provisions of this Act relative to the service of notices or processes on a party to a suit shall be applicable to the service of notices and processes on such recognized agents.

Appointment of pleader.

18. The appointment of a pleader to make any such application or appearance as aforesaid shall be in writing, and shall be filed in the Court. When so filed, it shall be considered to be in full force until revoked by a writing filed in the Court. All notices given to, or processes served on the pleader of any party,

Service of notice on pleaders.

or left at the office or ordinary residence of such pleader, relative to a suit, and whether the same be for the personal attendance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct.

Officers or Soldiers who cannot obtain leave of absence may authorize any person to appear for them.

19. When an Officer or Soldier in the service of the Government is a party to a suit, and cannot obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any member of his family or any other person to commence, conduct, and manage the suit or the defence, as the case may be, in his stead. The authority shall be in writing, and shall be signed by the Officer or Soldier in the presence of his Commanding Officer, who shall countersign the same, and it shall be filed in the Court. When so filed, the counter-signature of the Commanding Officer shall be sufficient proof that the authority was duly executed, and

that the Officer or Soldier by whom it was granted could not obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person.

The person so authorized may appear personally, or appoint pleader.

20. Any person who may be authorized, as in the last preceding Section mentioned, by an Officer or Soldier to prosecute or defend a suit in his stead, shall be competent to prosecute or defend it in person in the same manner as the Officer or Soldier could do if present; or he may appoint a pleader of the Court to prosecute or defend the suit on behalf of such Officer or Soldier. And all notices or processes relative to the suit which may be served upon any person who shall be so authorized as aforesaid by an Officer or Soldier, or upon any pleader who shall be appointed as aforesaid by such person to act for or on behalf of such Officer or Soldier, shall be as effectual for all purposes relative to the suit as if the same had been served on the party in person or on a pleader appointed by him.

Exemption of certain women from personal appearance.

21. Women, who according to the custom and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

Government may exempt certain persons from personal appearance.

22. The Government may at its discretion exempt from personal appearance in Court any person whose rank in the opinion of the Government entitles him to the privilege of exemption, and may at its discretion withdraw such privilege. The names of the persons so exempted (if any) residing within the jurisdiction of the Principal Civil Court of each District shall from time to time be forwarded to such Court by the local Government, and a list of such persons (if any) shall be kept in such Court and in the several subordinate Courts of the District.

Cost of serving process.

Requisite sum to be paid into Court before process issued.

23. Every process required to be issued under this Act, shall be served at the expense of the party at whose instance it is issued, unless otherwise specially directed by the Court; and the sum required to defray the cost of such service shall be paid into Court before the process is issued.

24. If any plaint, written statement, or declaration in writing

Punishment for false verification of plaint, statement, &c.

required by this Act to be verified shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the provision of the law for the time being in force for the punishment of giving or fabricating false evidence.

CHAPTER III.

OF A SUIT TILL FINAL DECREE,

OF THE INSTITUTION OF SUITS.

Suits to be commenced by plaint.

25. All suits shall be commenced by a plaint which, except when otherwise specially provided by this Act, shall be presented to the Court by the plaintiff in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf.

Particulars to be given in the plaint.

26. The plaint shall be distinctly written in the language in ordinary use in proceedings before the Court and shall contain the following particulars:—

1.— The name, description, and place of abode of the plaintiff.

2.—The name, description, and place of abode of the defendant, so far as they can be ascertained.

3.—The relief sought for, the subject of the claim, the cause of action and when it accrued; and if the cause of action accrued beyond the period ordinarily allowed by any law for commencing such a suit, the ground upon which exemption from the law is claimed.

The following are instances:—

If the suit be for money due on a bond or other written instrument:—Payment of due on *(a bond or other written instrument as the case may be)*, for the sum of , bearing date the day of , and payable on the day of , namely,—

Principal.. .. ..
Interest .. ..
Amount paid (if any) .. ..

Balance due ....

If the plaintiff claim exemption from any law of limitation say—"The plaintiff was an infant (*or as the case may be*) from the day of to the day of ".

If the suit be for the price of goods sold:—Payment of on account of maunds of (*rice, indigo, sugar, or as the case may be*) sold on the day of and the price of which became payable on the day of as per accountat foot.

If the suit be for damages for an injury done:—Payment of on account of injury done to the plaintiff [*here set out the nature of the injury, and state the particulars of the pecuniary loss* (*if any*).]

4.—When the claim is for any property other than money, its estimate value.

The follwing is an instance

If the suit be for an estate or for a share in an estate paying Revenue to Government:—Possession of the estate or of share in the estate, called , situate in the Zillah of the sudder jumma of which is and estimated value which the plaintiff was dispossessed (*or forcibly or fraudulently dispossessed, if the case be so*) on the day of ; or to which the plaintiff became entitled by inheritance from (*or by gift, purchase, or otherwise, as the case may be*) on or about the day of .

5—When the claim is for land or for any interest in land, the nature of the tenure or interest must be specified; and if the claim be for land forming part of a village or other known division, or for a house, garden, or the like, its situation shall be described by the setting forth of boundaries, or in such other manner as may suffice for its identification.

6.—In all suits by or against the Government, or one of its Officers in his official capacity, or any Corporation, or any Company authorized to sue and be sued in the name of an Officer or Trustees, the words "The Government," or "The Collector of ," or otherwise as the case may be, or the name of the Corporation or the name or names of the Officer or Trustees of

the Company, shall be inserted in Nos. 1 and 2 instead of the name and description of the plaintiff or defendant. But in all other cases it shall be necessary to specify the names of all the parties.

Plaint to be subscribed and verified.

27. The plaint shall be subscribed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff in the manner following or to the like effect:—

I (A. B.) the plaintiff named in the above plaint do declare that what is stated therein is true to the best of my information and belief.

If plaintiff by reason of absence be unable to subscribe and verify the plaint.

28. If the plaintiff, by reason of absence or for other good cause, be unable to subscribe and verify the plaint, the Court may allow the plaint to be subscribed and verified on behalf of the plaintiff by any person whom the Court may consider competent to make the verification. In suits by a Corporation or a Company authorized to sue and be sued in the name of an Officer or Trustees, the plaint shall be subscribed and verified on behalf of the Corporation or Company by any Director Secretary or other principal Officer of the Corporation or Company who may be able to depose to the facts of the case.

In suits by a Corporation or Company a Director or Secretary shall verify the plaint.

Court may reject plaint, if it do not contain the required particulars, &c.

29. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or if it contain particulars other than those required to be specified whether relevant to the suit or not, or if the statement of particulars be unnecessarily prolix, or if the plaint be not subscribed and verified as hereinbefore required, the Court may reject the plaint, or at its discretion may allow the plaint to be amended.

Plaint to be returned, if the claim is beyond the jurisdiction of the Court.

30. If the amount or estimated value of the claim, as stated by the plaintiff, be beyond the jurisdiction of the Court, the plaint shall be returned to the plaintiff in order to its being presented in the proper Court.

31. If it appear to the Court that the claim is improperly

Plaint to be rejected, if improperly or insufficiently valued.

valued, or being properly valued that the plaint is written upon stamped paper of inadequate value, and the plaintiff, on being required by the Court to correct such improper valuation or to supply such additional stamp paper as may be necessary, shall not comply with the requisition, the Court shall reject the plaint.

Plaint to be rejected, if it appear to the Court that plaintiff has no cause of action or that right of action is barred by lapse of time.

Amendment of plaint.

32. If upon the face of the plaint, or after questioning the plaintiff, it appear to the Court that the subject matter of the plaint does not constitute a cause of action, or that the right of action is barred by lapse of time, the Court shall reject the plaint. Provided that the Court may in any case allow the plaint to be amended, if it appear proper to do so.

Plaint to be returned if it appear to the Court that it has not jurisdiction.

33. If it appear to the Court that the cause of action did not arise, or that the defendant is not dwelling or personally working for gain within the limits of the jurisdiction of the Court, or, if the claim relate to land or other immovable property, that such land or other property is not situate within such limits the Court shall return the plaint to the plaintiff in order to its being presented in proper Court.

Security for costs to be furnished by plaintiff at the time of presenting the plaint, if he resides out of the British territories in India.

Plaint to be rejected if security be not furnished.

34. A suit by a party ordinarily residing out of the British territories in India, and not possessing any land or other immovable property within those territories independent of the property in suit, shall not be entertained unless the plaintiff, at the time of presenting the plaint or within such time as the Court shall order, furnish security for the payment of all costs that may be incurred by the defendant in the suit. In the event of such security not being furnished, the Court shall return the plaint to the plaintiff.

Security for costs may be required in any stage of suit, if it appear that plaintiff resides out of India.

35. If in any stage of a suit it shall appear to the Court that the plaintiff (being sole plaintiff) is a person residing out of the British territories in India, the Court may order him, within a time to be fixed by such order, to furnish security for the payment of all costs incurred and to be incurred by the

defendant in the suit. In the event of such security not being furnished within the time so fixed, the Court shall pass judgment against the plaintiff by default, unless he be permitted to withdraw from the suit under the provisions of Section 97.

Appeal from order rejecting plaint.

36. Whenever a plaint is rejected under any of the foregoing Sections, an appeal shall lie from the order rejecting the plaint. The rejection of a plaint on any of the grounds mentioned in Sections 29 and 31 shall not preclude a plaintiff from presenting a fresh plaint in respect of the same cause of action.

Proceeding in a suit for immovable property in different jurisdictions.

37. If the suit be for land or other immovable property situate partly within the jurisdiction of the Court and partly within the jurisdiction of some other Court or Courts, the Court shall proceed according to the rules contained in Section 11, Section 12, or Section 13, as the case may be.

When the plaint is admissible, particulars to be entered in a Register.

38. If the Court consider the plaint admissible, the particulars mentioned in Section 26 of this Chapter shall be entered in a book to be kept for the purpose, and called the Register of Civil Suits; and the entries shall be numbered in every year according to the order in which the plaint is presented. The Register shall be kept in the form contained in the Schedule (A) hereunto annexed.

Form of the Register.

Written document to be produced in Court when plaint is presented.

39. When the plaintiff sues upon any written document or relies upon any such document as evidence in support of his claim, he shall produce the same in Court when the plaint is presented, and shall at the same time deliver a copy of the document to be filed with the plaint; if the document be an entry in a shop-book or other book, the plaintiff shall produce the book to the Court together with a copy of the entry on which he relies. The Court shall forthwith mark the document for the purpose of identification; and after examining and comparing the copy with the original, shall return the document to the plaintiff. The plaintiff may, if he think proper, deliver the original document to be filed instead of the copy. The Court may, if it see sufficient cause, direct any

And copy filed with plaint.

Original to be marked and returned.

If plaintiff wish, original may be filed instead of copy.

Court may order document to be impounded.

written document so produced to be impounded and kept in the custody of some Officer of the Court, for such period and subject to such conditions as to the Court shall seem meet. Any document not produced in Court by the plaintiff when the plaint is presented, shall not be received in evidence on his behalf at the hearing of the suit without the sanction of the Court.

Document not produced when plaint filed, to be inadmissible in evidence.

40. If the plaintiff require the production of any written document in the possession or power of the defendant, he may, at the time of presenting the plaint, deliver to the Court a description of the document, in order that the defendant may be required to produce the same.

If plaintiff require production of document in possession of defendant.

Of Summoning the Defendant.

41. When the plaint has been registered, a summons under the signature of the Judge and the seal of the Court shall be issued to the defendant to appear and answer the claim, on a day to be therein specified, in person or by a pleader of the Court duly instructed and able to answer all material questions relating to the suit, or by a pleader who shall be accompanied by some other person able to answer all such questions. The Court shall determine at the time of issuing the summons whether it shall be for the settlement of issues only or for the final disposal of the suit, and the summons shall contain a direction accordingly.

On plaint being registered, summons to issue to defendant.

Summons to be either to settle the issues, or for the final disposal of the case.

42. If the Court see reason to require the personal attendance of the defendant, the summons shall order the defendant to appear personally in Court on the day therein specified. If the Court see reason to require the personal attendance of the plaintiff on that day, it may make an order for such attendance. Provided that no plaintiff or defendant shall be ordered to attend in person, who at the time is *bonâ fide* residing at a distance of more than fifty miles from the place where the Court is held, unless he be resident within the limits of the jurisdiction of the Court.

Personal appearance of defendant or plaintiff.

If resident within 50 miles.

Or within the local jurisdiction of the Court.

43. The summons to appear shall order the defendant to produce any written document in his possession or power, of which the plaintiff demands inspection, or upon which the defendant intends to rely in support of his defence.

Summons shall order defendant to produce documents.

44. The summons shall be in the Form contained in the Schedule (B) hereunto annexed or to the like effect.

Form of summons.

45. The day for the appearance of the defendant shall be fixed by the Court with reference to the place of residence of the defendant, and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant a sufficient time to enable him to appear and answer in person or by a pleader on such day.

The day for appearance of defendant how to be fixed.

46. In suits against a Corporation or a Company authorized to sue and be sued in the name of an Officer or Trustees, the Court may, if it think proper, require the personal attendance of any Director, Secretary, or other principal Officer of the Corporation or Company who may be able to answer all material questions relating to the suit.

Court may order personal appearance of a Director or Security in suits against a Corporation or Company.

Service of Summons on the Defendant.

47. The summons shall be delivered to the Nazir or other proper Officer of the Court to be served by himself or one of his subordinates, and such Officer shall be responsible for its due service.

Summons shall be served by Officer of Court

48. Service of the summons shall be made by delivering or tendering a copy thereof under the signature of the Judge and seal of the Court; and when there are more defendants than one, service of the summons shall be made on each defendant.

How service shall be made.

When there are several defendant

49. Whenever it may be practicable the service shall be on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

Service to be on defendant in person, when practicable.

Service on agent sufficient.

50. Besides the recognized agents described in Section 17

Who may be an agent to receive service.

any person residing within the jurisdiction of the Court may be appointed an agent to receive the service of summonses and other processes.

51. The appointment of such agent shall be in writing, and the orignal appointment, or a copy thereof if the appointment be a general one, shall be filed in the Court.

Appointment of such agent to be in writing and to be filed in Court.

52. The Government pleader in each Court shall be accounted the agent of the Government for the purpose of receiving services of summonses and other judicial processes against the Government, issuing out of the Court in which he may be the pleader of Government.

Agent of Government.

53. When the defendant cannot be found, and has no agent empowered to accept the service of the summons, it may be made on any adult male member of his family residing with him.

If defendant cannot be found, and has no agent, service may be made on a male member of his family.

54. In all cases where the summons is served on the defendant personally or any agent or other person on his behalf, the serving Officer shall require the signature of the person on whom the service may be made, to an acknowledgment of service, to be endorsed on the original summons or on a copy thereof under the seal of the Court. If such person refuse to sign the acknowledgment, the service of the summons shall nevertheless be held sufficient, if it be otherwise proved to the satisfaction of the Court.

In all cases the person served is to be required to endorse the summons.

But service is sufficient without.

55. When the defendant cannot be found, and there is no agent empowered to accept the service, nor any other person on whom the service can be made, the serving Officer shall fix the copy of the summons on the outer door of the house in which the defendant is dwelling: and if he is not dwelling in the place mentioned in the summons, the serving Officer shall return the summons to the Court from whence it issued with an endorsement thereon that he has been unable to serve it. Provided that, if the serving Officer is informed that the defendant is to be found or has his dwelling in a place within the jurisdiction of

If the summons cannot be served, a copy shall be fixed to the door of the dwelling house.

If defendant do not dwell in the place mentioned, the summons shall be returned with an endorsement of non-service.

Proviso.

the Court other than that indicated in the summons, the Officer may proceed to that place to serve the summons.

If served, time and manner of service to be endorsed on summons.

56. The serving Officer shall, in all cases in which the summons has been served, endorse on the original summons or on a copy thereof under the seal of the Court, the time when and the manner in which it was served.

When summons is returned unserved, Court to order substituted service, if satisfied that the defendant is avoiding service.

57. When a summons is returned to the Court without having been served, if the plaintiff shall satisfy the Court that there is reasonable ground for believing that the defendant is keeping out of the way of its Officer for the purpose of avoiding the service of the summons, the Court shall order the summons to be served by fixing up a copy thereof upon some conspicuous place in the Court-house, and also upon the door of the house in which the defendant shall have last resided, if it be known where he last resided; or that the summons shall be served in such other manner as the Court shall think proper. And the service which shall be substituted by order of the Court, shall be as effectual to all intents and purposes as if it had been effected in the manner above specified.

When service is substituted, the time for appearance to be fixed.

58. Whenever service shall be substituted by order of Court by virtue of the power contained in the last preceding Section, the Court shall fix such time for the appearance of the defendant as the case may require.

How the summons is to be served when the defendant is resident within the jurisdiction of another Court and has no agent to accept service.

59. If the defendant be resident within the jurisdiction of any Court other than that in which the suit is instituted, and have no agent empowered to accept the service, the Court in which the suit is instituted shall transmit the summons, either by an Officer of the Court or by post, to any Court having jurisdiction at the place where the defendant resides, by which it can be most conveniently served, and shall fix such time for the appearance of the defendant as the case may require; and the Court to which the summons is transmitted, shall, upon receipt of the summons, deliver the same to the Nazir or other proper Officer of such Court to be served in the manner above directed; and upon the return of the sum-

mons by the serving Officer, it shall be re-transmitted to the Court from whence it originally issued.

How the summons is to be served when the defendant resides out of the British territories in India and has no agent to accept service.

Time for appearance.

60. If the defendant be resident out of the British territories in India, and have no agent empowered to accept the service, the summons shall be addressed to the defendant at the place where he may reside, and forwarded to him by post: in such case the time for the appearance of the defendant shall be regulated by the time which may be required for communication by post between the place at which the Court is held and the place where the defendant resides; and if, on the day fixed for the hearing of the suit or on any day to which the hearing may be adjourned, the defendant shall not appear in person or by pleader, the plaintiff may apply to the Court, and it shall be lawful for the Court to direct that the plaintiff shall be at liberty to proceed with his suit in such manner and subject to such conditions as to the Court may seem meet.

In case of non-appearance of defendant, Court may direct suit to proceed subject to conditions.

In suit for immovable property, service may in certain cases be made on agent in charge of such property.

61. When the suit is for land or other immovable property and the summons for any reason cannot be served on the defendant in person, and the defendant has no agent empowered to accept the service, the summons may be served on any agent of the defendant in charge of such land or other immovable property.

How service may be made on Government Servants.

62. When the defendant is in the serve of the Government, the Court may transmit a copy of the summons to the head Officer of the Office in which the defendant is employed, for the purpose of being served on him, if it shall appear to the Court that the summons may be most conveniently so served. If the defendant be an Officer or Soldier, the Court shall transmit a copy of the summons to the Commanding Officer of the Corps to which the defendant belongs, for the purpose of being served on him. The Officer to whom the summons is transmitted, after causing the summons to be served on the person to whom it is addressed if practicable, shall return it to the Court with the written acknow-

Service on Officers and Soldiers.

ledgment of person endorsed thereon. If from any cause the summons cannot be served upon the person to whom it is addressed, it shall be returned to the Court by which it was transmitted with information of the cause which has prevented the service. In such case the Court shall adopt such other means of serving the summons as it may deem proper.

Service on a Corporation or Company.

63. When the suit is against a Corporation or a Company authorized to sue and be sued in the name of an Officer or Trustees, the summons may be served by leaving the same at the registered Office (if any) of the Company, or sending it through the Post Office by a letter addressed to such Office, or by giving it to any Director, Secretary, or other principal Officer of the Corporation or Company.

In what case a letter may be substituted for a summons.

64. Nothing contained in the preceding rules shall be construed to prevent the Court from substituting for the summons, a letter or other appropriate communication under the signature of the Judge and seal of the Court, when the person whose appearance is required is of a rank which entitles him to such mark of consideration. The letter or other communication shall contain all the particulars required to be stated in the summons, and shall be treated in all respects as a summons.

Service how to be made in such case.

65. When a letter or other communication is substituted for a summons under the authority of the last preceding Section, it may be transmitted through the Post Office, or by a special messenger selected by the Court, or in any other manner which the Court may deem sufficient; unless the party shall have an agent empowered to accept service of Judicial process, in which case delivery to such agent shall be deemed sufficient service.

Proof of due service and delivery of summons, letter, &c. transmitted through the post.

66. Whenever it is provided that any summons, letter or other communication may be transmitted to the person to whom it is addressed through the Post Office, proof that the same was correctly addressed to such person at his place of residence, and that it was duly posted and registered according to Section XXXVIII. of Act XVII. of 1854 *(for the management of the Post Office, for the regulation of the duties of*

Postage, and for the punishment of offences against the Post Office), shall be sufficient proof of the due service and delivery of the summons, letter, or other communication, in the absence of evidence to the contrary.

OF SUITS AGAINST GOVERNMENT AND PUBLIC OFFICERS.

In suits against Government, summons to be served on Government Pleader.

67. If the suit be against the Government, the summons shall be served on the Government Pleader. The Court, in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the Government, and may extend the time at its discretion on the application of the Government Pleader. The Court may also, if it think proper, direct the attendance of a person who may be able to answer all material questions relating to the suit.

Appearance and answer.

In suits against Government Officers for alleged Official acts, summons to be served on them.

68. If the suit be against an Officer of the Government for an act which the plaintiff alleges to have been done by such Officer in his official capacity, the summons shall be served upon such Officer in the manner hereinbefore provided.

Court may grant extension of time to enable Officer to make a reference to Government.

69. If the Officer on receiving the summons shall consider it proper to make a reference to Government before answering to the plaint, he may move the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channels; and the Court upon such motion may extend the time for so long as shall appear to it to be requisite.

If Government undertake defence, Government Pleader to appear and move that a note of his appearance be entered in the Register.

70. If the Government shall undertake the defence of the suit, the Government Pleader shall be furnished with authority to appear and answer to the plaint; and, upon motion made by him, the Court shall order a note to that effect to be entered in the Register.

71. If such motion shall not be made by the Government

If no such motion be made, case to proceed as in a suit between private parties.

But defendant not liable to arrest before judgment.

Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties except that the defendant shall not be liable to arrest before judgment.

Defendant may in certain cases be exempted from personal appearance.

72. If in any such suit the Court shall require the personal appearance of the defendant, and the defendant shall satisfy the Court that he cannot absent himself from his duty without injury to the public service, the Court shall exempt him from such appearance, but he shall be liable to be examined in any way in which an absent witness may be examined.

How Persons not before the Court may be made Parties to a Suit.

Court may adjourn hearing and direct that parties appearing to be interested in a suit shall be made parties to the suit.

73. If it appear to the Court, at any hearing of a suit, that all the persons who may be entitled to, or who claim some share or interest in the subject matter of the suit, and who may be likely to be affected by the result, have not been made parties to the suit, the Court may adjourn the hearing of the suit to a future day to be fixed by the Court, and direct that such persons shall be made either plaintiffs or defendants in the suit as the case may be. In such case the Court shall issue a notice to such persons in the manner provided in this Act for the service of a summons on a defendant.

Of Arrest before Judgment.

In suits for moveable property, when defendant is about to leave the jurisdiction, &c. plaintiff may apply that security be taken.

74. If in any suit, not being a suit for land or other immovable property, the defendant, with intent to avoid or delay the plaintiff, or to obstruct or delay the execution of any decree that may be passed against him, is about to leave the jurisdiction of the Court, or has disposed of or removed from the jurisdiction of the Court his property or any part thereof, the plaintiff may, either at the institution of the suit, or at any time thereafter until final judgment, make an application to the Court that security be taken for the appear-

ance of the defendant to answer any judgment that may be passed against him in the suit.

Court may issue warrant to bring up defendant to show cause why he should not give bail.

75. If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be of opinion that there is probable cause for believing that the defendant is about to leave its jurisdiction with the intent of avoiding or delaying the plaintiff, or that he has disposed of or removed from the jurisdiction of the Court his property or any part thereof with the intent to obstruct or delay the execution of any decree, it shall be lawful for the Court to issue a warrant to the proper Officer, enjoining him to bring the defendant before the Court, that he may show cause why he should not give good and sufficient bail for his appearance.

If defendant fail to show cause, Court may order him to give bail.

76. If the defendant fail to show such cause, the Court shall order him to give bail for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit; and the surety or sureties shall undertake, in default of such appearance, to pay any sum of money that may be adjudged against the defendant in the suit, with costs. Any order made by the Court, under the provisions of this Section, shall be open to appeal by the defendant.

Appeal.

Deposit in lieu of bail.

77. Should a defendant offer, in lieu of bail for his appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him, with the costs of the suit, the Court may accept such deposit.

Defendant to be committed to custody if he cannot give security.

78. In the event of the defendant neither furnishing security nor offering a sufficient deposit, he may be committed to custody until the decision of the suit, or if judgment be given against the defendant until the execution of the decree if the Court shall so order.

Compensation to defendant arrested on insufficient grounds.

79. If it shall appear to the Court that the arrest of the defendant was applied for on insufficient grounds, or if the suit of the plaintiff is dismissed or judgment is given against him by default or

otherwise and it shall appear to the Court that there was no probable ground for instituting the suit, the Court may (on the application of the defendant) award against the plaintiff in its decree such amount, not exceeding the sum of one thousand Rupees, as it may deem a reasonable compensation to the defendant for any injury or loss which he may have sustained by reason of such arrest. Provided the Court shall not award a larger amount of compensation under this Section than it is competent to such Court to decree in an action for damages. An award of compensation under this Section shall bar any suit for damages in respect of such arrest.

Proviso as to amount.

80. If in any suit the defendant is about to leave the British territories in India with intent to remain absent so long that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant, the plaintiff may make an application to the Court to the effect and in the manner aforesaid, and the procedure thereupon shall be in all respects the same as herein before provided.

When the defendant is about to leave India, the application to be made to the Court.

Of Attachment before Judgment.

81. If the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property or any part thereof, or to remove any such property from the jurisdiction of the Court where the suit is pending, the plaintiff may apply to the Court, either at the time of the institution of the suit or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, and, on his failing to give such security, to direct that any property, movable or immovable, belonging to the defendant, shall be attached until the further order of the Court.

In what cases plaintiff may apply before judgment for security from defendant to fulfil decree, and in default for an attachment of defendant's property.

82. The application shall contain a specification of the property required to be attached, and the estimated value of each article or item thereof,

Application how to be made.

and the plaintiff shall, at the time of making the application declare that the defendant is about to dispose of or remove his property with such intent as aforesaid.

83. If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of the decree, it shall be lawful for the Court to issue a warrant to the proper Officer, commanding him to call upon the defendant, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order to produce and place at the disposal of the Court, when required the said property or the value of the same or such portion thereof as may be sufficient to fulfil the decree, or to appear and show cause why he should not furnish security. The Court may also in the warrant direct the attachment until further order of the whole or any portion of the property specified in the application.

Form of warrant to be issued.

84. If the defendant fail to show such cause or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application, if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order. If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it shall have been attached, the Court shall order the attachment to be withdrawn.

If cause be not shown or security be not furnished, property may be attached.

Withdrawal of attachment.

85. The attachment shall be made according to the nature of the property to be attached, in the manner hereinafter prescribed for the attachment of property in execution of a decree for money. Any order for the attachment of property under the preceding Section shall be open to appeal by the defendant.

How the attachment is to be made.

Appeal.

86. In the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner hereinafter prescribed for the investigation of claims to property attached in execution of a decree for money.

Claims to property attached before judgment, how to be investigated.

87. In all cases of attachment before judgment, the Court which passed the order for the attachment shall at any time remove the same, on the defendant furnishing security as above required together with security for the costs of the attachment.

Attachment may be removed when security is furnished.

88. If it shall appear to the Court that the attachment was applied for on insufficient grounds, or if the suit of the plaintiff is dismissed or judgment is given against him by default or otherwise and it shall appear to the Court that there was no probable ground for instituting the suit, the Court may (on the application of the defendant) award against the plaintiff in its decree such amount, not exceeding the sum of one thousand Rupees, as it may deem a reasonable compensation to the defendant for the expense or injury occasioned to him by the attachment of his property. Provided that the Court shall not award a larger amount of compensation under this Section than it is competent to such Court to decree in an action for damages. An award of compensation under this Section shall bar any suit for damages in respect of such attachment.

Compensation for attachment applied for on insufficient grounds, &c.

Proviso.

89. Attachments before judgment shall not affect the rights of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Attachment not to affect the rights of person not parties to the suit, or bar the execution of decrees.

90. If it shall appear to the Court by whose order the property may have been attached before judgment, that there is reasonable ground for supposition that the decree, in satisfaction of which the sale of the property is applied for was obtained by fraud or other improper means, the Court may refuse to allow the property to be sold in execution, if the decree be a decree of that Court; or if it be a decree of another Court, may stay the proceedings for a reasonable time to enable the plaintiff in the pending suit to adopt proceedings to set aside the decree.

Court may stay the sale of property already under attachment when execution of a decree fraudulently obtained is applied for.

91. Whenever lands paying revenue to Government or a tenure liable to summary sale under the provisions of Regulation VIII, 1819 of the

Special case in which party may be

put in immediate possession of land the subject of suit.

Bengal Code *(to declare the validity of certain tenures and to define the relative rights of Zemindars and Putnee Talookdars &c.)* form the subject of a suit, if the party in possession of such lands or tenure shall neglect to pay the Government revenue or rent due to the proprietor of the estate, as the case may be, and a public sale shall in consequence be ordered to take place, the party not in possession shall, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court) be put in immediate possession of the lands or tenure; and the Court in its decree may award against the defendant the amount so paid, with interest thereupon at such rate as to the Court may seem fit, or may charge the amount so paid, with interest thereupon, at such rate as the Court may order, in any adjustment of accounts which may be directed in the final decree upon the suit.

OF INJUNCTIONS.

Cases in which an injunction to stay waste, &c. may be granted.

92. In any suit in which it shall be shown to the satisfaction of the Court that any property which is in dispute in the suit is in danger of being wasted, damaged, or alienated by any party to the suit, it shall be lawful for the Court to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, or to give such other orders for the purpose of staying and preventing him from wasting, damaging, or alienating the property, as to the Court may seem meet. And in all cases in which it may appear to the Court to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the Court to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court may seem proper. If the property

Or in which a receiver or manager may be appointed.

When the Collector may be appointed receiver or manager.

be land paying revenue to Government, and it is considered that the interests of those concerned will be promoted by the management of the Collector, the Court may appoint the Collector to be receiver and manager of such land, unless the Government shall by any general order prohibit the appointment of Collectors for such purpose, or shall in any particular case prohibit the appointment of the Collector to be such receiver.

In suits to restrain breach of contract &c.

93. In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same be accompanied with any claim for damages or not, it shall be lawful for the plaintiff, at any time after the commencement of the suit, and whether before or after judgment, to apply to the Court for an injucntion to restrain the defendant from the repetition, or the continuance of the breach of contract or wrongful act complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right; and such injunction may be granted by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as to such Court shall seem reasonable and just, and in case of disobedience such injunction may be enforced by imprisonment in the same manner as a decree for specific performance: provided always that any order for an injunction may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Injunction to restrain repetition or continuance of breach.

Proviso.

Appeal.

94. Any order made under either of the last two preceding Sections shall be open to appeal by the defendant.

Before granting injunction, Court may direct reasonable notice to be given to the opposite party.

95. The Court may in every case before granting an injunction direct such reasonable notice of the application for the same tobe given to the opposite party as it shall see fit.

Compensation to defendant for needless issue of injunction.

96. If it shall appear to the Court that the injunction was aplie for on insufficient grounds, or if the claim of the plaintiff is dismissed or judgment is given against him by default or otherwise and it ehall appear to

the Court that there was no probable ground for instituting the suit, the Court may (on the application of the defendant) award against the plaintiff in its decree such sum, not exceeding one thousand Rupees, as it may deem a reasonable compensation to the defendant for the expense or injury occasioned to him by the issue of the injunction. Provided that the Court shall not award a larger amount of compensation under this section than it is competent to such Court to decree in an action for damages. An award of compensation under this Section shall bar any suit for damages in respect of the issue of the injunction.

Proviso.

OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

Court may allow plaintiff to withdraw from a suit, with liberty to bring a fresh suit.

97. If the plaintiff at any time before final judgment satisfy the Court that there are sufficient grounds for permitting him to withdraw from the suit with liberty to bring a fresh suit for the same matter, it shall be competent to the Court to grant such permission on such terms as to costs or otherwise as it may deem proper. In any such fresh suit the plaintiff shall be bound by the rules for the limitation of actions in the same manner as if the first suit had not been brought. If the plaintiff withdraw from the suit without such permission, he shall be precluded from bringing a fresh suit for the same matter.

Adjustment or compromise.

Court may grant certificate for refund of stamp duty on plaint if suit be adjusted.

98. If a suit shall be adjusted by mutual agreement or compromise, or if the defendant satisfy the plaintiff in respect to the matter of the suit, such agreement, compromise, or satisfaction shall be recorded, and the suit shall be disposed of in accordance therewith. On the application of the plaintiff reciting the substance of such agreement, compromise, or satisfaction, the Court, if satisfied that such agreement, compromise, or satisfaction has been actually entered into or made, shall grant a certificate to the plaintiff authorizing him to receive back from the Collector the full amount of stamp duty paid on the plaint if the application shall have been presented before the settlement of issues, or half the amount if presented at any time after the settlement of issues and before any witness has been examined. Provided however that no such certificate

Proviso

shall be granted if the adjustment between the parties be such as to require a decree to pass on which process of execution can be taken out.

OF THE DEATH, MARRIAGE, AND BANKRUPTCY OR INSOLVENCY OF PARTIES.

Suit not to abate by death in certain cases.

99. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survive.

Proceeding in case of death of one of several plaintiffs or defendants, if the cause of action survives.

100. If there be two or more plaintiffs or defendants and one of them die, and if the cause of action survive to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and against the surviving defendant or defendants.

Proceeding in case of death of one of several plaintiffs, where the cause of action accrues to the survivor and the representative of the deceased.

101. If there be two or more plaintiffs, and one of them die and if the cause of action shall not survive to the surviving plaintiff or plaintiffs alone but shall survive to them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of the legal representative of the deceased plaintiff, enter the name of such representative in the Register of the suit in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative of the deceased plaintiff. If no application shall be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and the legal representative of the deceased plaintiff shall be interested in and shall be bound by the judgment given in the suit in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

Proceeding in case of death of sole or sole surviving plaintiff.

102. In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, on the application of the representative of such plaintiff, enter the legal name of such representative in the place of such plaintiff in the Register of the suit, and the suit shall

thereupon proceed; if no such application shall be made to the Court within what it may consider a reasonable time by any person claiming to be the legal representative of the deceased sole plaintiff or sole surviving plaintiff, it shall be competent to the Court to pass an order that the suit shall abate, and to award to the defendant the reasonable cost which he may have incurred in defending the suit, to be recovered from the estate of the deceased sole plaintiff or surviving plaintiff; or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs as may seem fit, pass such other order for bringing in the legal representative of the deceased sole plaintiff or surviving plaintiff, and for proceeding with the suit in order to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

Proceeding in case of dispute as to who is the legal representative of a deceased plaintiff.

103. If any dispute arise as to who is the legal representative of a deceased plaintiff, it shall be competent to the Court either to stay the suit until the fact has been duly determined in another suit, or to decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

Proceeding in case of death of one of several defendants or of a sole or sole surviving defendant.

104. If there be two or more defendants, and one of them die, and the cause of action shall not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant or sole surviving-defendant, where the action survives, the plaintiff may make an application to the Court specifying the name, description, and place of abode of any person whom the plaintiff alleges to be the legal representative of such defendant, and whom he desires to be made the defendant in his stead; and the Court shall thereupon enter the name of such representative in the Register of the suit in the place of such defendant, and shall issue a summons to him to appear on a day to be therein mentioned to defend the suit; and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit.

105. The marriage of a woman, plaintiff or defendant, shall

Marriages of a Female plaintiff or defendant not to abate the suit.

not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and the decree thereupon may be executed upon the wife alone; and if the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with the permission of the Court, be issued upon the application of the husband, where the husband is by law entitled to the money or thing which may be the subject of the decree.

Bankruptcy or insolvency when not to abate the suit.

106. The bankruptcy or insolvency of the plaintiff in any suit which the Assignee might maintain for the benefit of the creditors shall not be a valid objection to the continuance of such suit, unless the Assignee shall decline to continue the suit and to give security for the costs thereof within such reasonable time as the Court may order; if the Assignee neglect or refuse to continue the suit and to give such security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, plead the bankruptcy or insolvency of the plaintiff as a reason for abating the suit.

OF NOTICES TO PRODUCE, AND HOW THEY ARE TO BE SERVED.

Two notices in writing to be delivered to the proper Officer of the Court.

107. Whenever any of the parties to a suit is desirous that any document, writing, or other thing, which he believes to be in the possession or power of another of the parties thereto, should be produced at any hearing of the suit, and the production of such document, writing, or other thing has not previously been required, under the provisions of Sections 40 and 43, he shall at the earliest opportunity deliver to the Court two notices in writing to the party in whose possession or power he believes the document, writing, or other thing to be, calling upon him to produce the same; and one of such notices shall be filed in Court, and the other shall be delivered by the Court to the Nazir or other proper Officer, to be served upon such party.

108. In all cases in which a party to a suit has not appointed

Service of notices and other judicial process how to be made on a party who has not appointed a pleader to act for him.

a pleader to act for him, all notices and other judicial processes shall be served upon such party in the manner hereinbefore provided for the service of a summons upon a defendant to appear and answer.

OF THE APPEARANCE OF THE PARTIES, AND CONSEQUENCES OF NON-APPEARANCE.

Parties must appear in person or by pleader.

109. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by a pleader, and the suit shall then be heard unless the hearing be adjourned to a future day which shall be fixed by the Court.

If neither party appear, suit to be dismissed with liberty to the plaintiff to bring a fresh suit.

110. If, on the day fixed for the defendant to appear and answer, or any other day subsequent thereto to which the hearing of the suit may be adjourned, neither party shall appear either in person or by a pleader when duly called upon by the Court, the suit shall be dismissed. Whenever a suit is dismissed under the provisions of this Section, the plaintiff shall be at liberty to bring a fresh suit unless precluded by the rules for the limitation of actions; or if he shall within the period of thirty days satisfy the Court that there was a sufficient excuse for his non-appearance, the Court may issue a fresh summons upon the plaint already filed.

Or if sufficient excuse for non-appearance, a fresh summons may be issued.

If plaintiff only appear, Court may proceed *ex parte* if due service of summons be proved.

111. If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall be proved to the satisfaction of the Court that the summons was duly served, the Court shall proceed to hear the suit *ex parte*. If the defendant appear on any subsequent day to which the hearing of the suit is adjourned, and shall assign good and sufficient cause for his previous non-appearance, he may, upon such terms as the Court may direct as to payment of costs or otherwise, be heard in answer to the suit in like manner as if he had appeared on the day fixed for his appearance.

If defendant appear on day of adjourned hearing, and assign good cause for his previous non-appearance, he may be heard.

112. If the plaintiff shall appear in person or by a pleader and the defendant shall not appear in person or by a pleader, and it shall not be proved to the satisfaction of the Court that the summons was duly served in any of the modes of service hereinbefore provided, the Court may direct a second summons to the defendant to be issued in any of the said modes.

If plaintiff only appear and due service of summons be not proved, Court may order issue of second summons.

113. If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall be proved to the satisfaction of the Court that the summons was served on the defendant but not in sufficient time to enable the defendant to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court and may direct notice of such day to be given to the defendant.

If plaintiff only appear, and service of summons be proved, but the service was not in due time. Court may adjourn hearing and direct notice to be given to defendant.

114. If the defendant shall appear in person or by a pleader, and the plaintiff shall not appear in person or by a pleader, the Court shall pass judgment against the plaintiff by default, unless the defendant admit the claim, in which case the Court shall pass judgment against the defendant upon such admission. When judgment is passed against a plaintiff by default, he shall be precluded from bringing a fresh suit in respect of the same cause of action.

If defendant only appear, Court to pass judgment by default against plaintiff, unless defendant admit the claim.

No fresh suit after such judgment.

115. When there are two or more plaintiffs, any one or more of them may be authorized to appear, plead, and act for the other or others of them; and in like manner, when there are two or more defendants, any one or more of them may be authorized to appear, plead, and act for the other or others of them; provided that the authority shall in all cases be in writing, and shall be filed in the Court; when so filed, it shall be as effectual to all intents and purposes as if the person so authorized to appear, plead, and act, were a pleader of the Court.

When there are several plaintiffs or defendants, each may authorize the other to appear for him.

116. If there are two or more plaintiffs, and one or more of

Consequence of non-appearance of one or more of several plaintiffs.

them shall appear in person or by a pleader or by a co-plaintiff duly authorized, and the other or others of them shall not appear in person or by a pleader or by a co-plaintiff duly authorized, it shall be competent to the Court to proceed with the suit at the instance of the plaintiff or plaintiffs who shall have appeared, in the same way as if all the plaintiffs had appeared, and to pass such order as may be just and proper in the circumstances of the case ; and if there are two or more defendants, and one or more of them shall appear in person or by a pleader or by a co-defendant duly authorized, and the other or others of them shall not appear in person or by a pleader or by a co-defendant duly authorized, the Court shall proceed with the suit to judgment, and shall at the time of passing judgment give such order with respect to the defendant or defendants who shall not have appeared as shall be just and proper in the circumstances of the case.

Consequence of non-appearance of one or more of several defendants.

117. If any plaintiff or defendant who shall have been ordered or summoned to appear personally under the provisions of Section 42, shall not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, such plaintiff or defendant shall be subject to all the provisions of the foregoing Sections applicable to plaintiffs and defendants respectively, who do not appear either in person or by pleader.

Consequence of non-appearance, without sufficient cause shown of any party to suit summoned or ordered to appear in person.

118. In support of the cause shown by a plaintiff or defendant for failure to appear in person, the Court shall receive any declaration in writing on unstamped paper, if signed by such Plaintiff or defendant and verified in the manner hereinbefore provided for the verification of plaints.

Court to receive declaration in support of cause shown.

119. No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But in all cases, in which judgment may be passed *ex parte* against a defendant, he may apply within a reasonable time, not exceeding thirty days after any process for enforcing the judgment has been executed, to

No appeal from judgments passed *ex parte* or by default.

When and how judgment *ex parte* against a defendant may be set aside.

the Court by which the judgment was passed, for an order to set it aside; and if it shall be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the judgment, and shall appoint a day for proceeding with the suit. In all cases of judgment against a plaintiff by default, he may apply, within thirty days from the date of the judgment, for an order to set it aside; and if it shall be proved to the satisfaction of the Court that the plaintiff was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the judgment by default, and shall appoint a day for proceeding with the suit.

When and how judgment by default against a plaintiff may be set aside.

But no judgment shall be set aside on any such application as aforesaid, unless notice thereof have been served on the opposite party. In all cases in which the Court shall pass an order under this Section for setting aside a judgment, the order shall be final; but in all appealable cases in which the Court shall reject the application, and appeal shall lie from the order or rejection to the tribunal to which the final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision, and be written upon stamp paper of the value prescribed for petitions to the Court where a stamp is required for petitions.

No judgment to be set aside, without notice to oppsite party.

Order for setting aside judgment shall be final.

In appealable cases, an appeal from order of rejection.

Proviso.

Of Written Statements.

120. The parties or their pleaders may tender at the first hearing of the suit written statements of their respective cases, and the Court shall receive the same and put them on the record. Such statements shall be written on the stamp paper prescribed for petitions to the Court where a stamp is required for petitions.

Written statements may be tendered by the parties at the first hearing of the suit.

Written statements to be on stamp paper.

121. If in a suit for debt the defendant desire to set-off

Particulars of set-off to be given in a written statement.

against the claim of the plaintiff the amount of any debt due to him from the plaintiff, he shall tender a written statement containing the particulars of his demand, and the Court shall thereupon enquire into the same. Provided that, if the sum claimed by the defendant exceed the amount cognizable by the Court, the defendant shall not be allowed to set-off the same unless he abandon the excess.

Abandonment of excess of set-off over claim.

122. No written statement shall be received after the first hearing of the suit, unless called for by the Court. But it shall be competent to the Court, at any time before the final judgment, to call for a written statement, or an additional written statement from any of the parties. When such statements are called for by the Court, they shall be received on plain paper.

No written statement to be received after first hearing unless called for by the Court.

Court may at any time call for a written statement.

123. Written statements shall be as brief as the nature of the case will admit, and shall not be argumentative nor by way of answer one to the other; but each statement shall be confined, as much as possible, to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he believes he will be able to prove if called upon by the Court. Written statements shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints, and no written statement shall be received unless it be so subscribed and verified.

How written statements are to be framed.

Written statements to be subscribed and verified.

124. If it shall appear to the Court that any written statement presented by or on behalf of a party, whether the same have been spontaneously tendered or have been called for by the Court is argumentative or unnecessarily prolix, or that it contains matter irrelevant to the suit, the Court may reject the same, and return it to the party with the order of rejection endorsed thereon; and it shall not be competent to a party whose written statement has been rejected for any of

Court may reject a written statement which is argumentative, prolix, or irrelevant.

these causes to present another written statement, unless it shall be expressly called for or allowed by the Court.

Of the Examination of the Parties.

125. At the first hearing of the suit, and if necessary at any subsequent hearing, any party who appears in person or is present in Court, or the pleader of any party who appears by a pleader, or if the pleader be accompanied by another person able to answer all material questions relating to the suit, then such other person, may be examined orally by the Court. Such examination shall (unless the pleader be the person examined) be upon oath or affirmation or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses. The substance of the examination shall be reduced to writing and form part of the record.

Oral examination of party &c.

Oath.

Substance of the examination to be written.

126. If any party who appears in person or is present in Court shall without lawful excuse refuse to answer any material question relating to the suit which the Court may think proper to put to such party, the Court may pass judgment against him, or make such other order in relation to the suit as it may deem proper in the circumstances of the case.

Consequence of refusal of a party to answer.

127. If the pleader of any party who shall appear by a pleader shall refuse or be unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer, if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall attend in person on such day; and if the party so directed to attend shall without lawful excuse fail to appear in person on the day to be so appointed, the Court may pass judgment against him, or make such other order in relation to the suit as it may deem proper in the circumstances of the case.

Consequence of refusal or inability of pleader to answer.

Of the Production of Documents.

128. The parties or their pleaders shall bring with them, and

Documentary evidence to be produced at first hearing.

have in readiness at the first hearing of the suit to be produced when called upon by the Court, all their documentary evidence of every description which may not already have been filed in Court, and all documents, writings, or other things which may have been specified in any notice which may have been served on them respectively within a reasonable time before the hearing of the suit; and no documentary evidence of any kind, which the parties or any of them may desire to produce, shall be received by the Court at any subsequent stage of the proceedings, unless good cause be shown to its satisfaction for the non-production thereof at the first hearing.

Exhibits to be received and inspected by the Court.

Rejection of exhibits.

129. All exhibits produced by the parties shall be received and inspected by the Court; but it shall be competent to the Court, after inspection, to reject any exhibit which it may consider irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Documents insufficiently stamped may be received on payment of deficient duty and penalty.

130. If the exhibit be a deed, instrument, or writing, chargeable with stamp duty under any Regulation or Act for the time being in force, and it shall appear to the Court that the deed, instrument, or writing, although written on stamp paper, does not bear a sufficient stamp, the Court shall nevertheless receive the same in evidence, saving all just exceptions on other grounds, if the party producing it or requiring its production shall pay into Court the deficiency of the stamp duty and a penalty equal to ten times the amount of the deficiency. Provided that, if it shall appear to the Court that there are reason-

Proviso.

able grounds for believing that the deed, instrument, or writing was not properly stamped with the intention of evading the stamp laws, the Court may reject the same.

Account of monies so received to be kept.

131. An entry of the fact of such payment and of the amount thereof shall be made in a book to be kept in the Court, and shall also be endorsed on the back of such deed, instrument, or writing under the signature of the Judge of the Court. The Court shall at the end of every

Monthly return to be made to Collector.

month make a return to the Collector of Revenue of the District of the monies (if any)

which it has so received by way of duty or penalty, distinguishing between such monies, and stating the number and title of the suit, and the name of the party from whom such monies were received, and the date (if any) and description of the document, for the purpose of identifying the same; and the Court shall pay over the said monies to the Collector of Revenue, or to such person as he may appoint to receive the same; and the Collector of Revenue or other proper authority shall, upon production of the deed, instrument, or writing, with the endorsement hereinbefore mentioned, cause such additional stamp as may be necessary to be affixed to such deed, instrument, or writing in respect of the sums so paid as aforesaid.

Admitted exhibits to be mraked and filed.

132. When an exhibit is received by the Court and admitted in evidence, it shall be endorsed with the number and title of the suit, the name of the party producing it, and the date on which it was produced, and shall be filed as part of the record. Provided that, if the exhibit be an entry in any shop book or other book, the party on whose behalf such book is produced shall furnish a copy of the entry, which copy shall be endorsed as aforesaid, and shall be filed as part of the record, and the book shall be returned to the party producing it.

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No stamp duty in respect of the production or filing of exhibits.

133. No stamp duty shall be leviable in respect of the production or filing of any exhibit, anything contained in any Regulation or Act notwithstanding.

Rejected exhibits to be marked and returned.

134. When an exhibit is rejected by the Court, it shall be endorsed in the manner specified in Section 132 with the addition of the word "rejected," and the endorsement shall be subscribed by the Judge. The exhibit shall then be returned to the party who produced it, unless the Court shall think proper, for special reasons (as on suspicion of forgery), to detain it.

Unless detained by the Court.

After the time for appeal has elapsed, exhibit admitted in evidence may be returned.

135. When the time for preferring an appeal from the decision passed in the suit has elapsed, or if an appeal has been preferred from such decision, then after the appeal has been finally disposed of, any person, whether a party to the suit or not, who may be desirous of receiving back any exhibit produced by him in the

suit, shall be entitled, on application to the Court in which such exhibit may be, to receive back the same unless the further use of such exhibit has been superseded by the terms of the decree, or the Court has directed it to be detained for purposes of public justice.

Exhibit may be returned before the time limited for special reasons.

136. Any exhibit may be returned before the time mentioned in the last preceding Section, if the Court in which the document may be shall think proper, for special reasons, to order its return. But in every case a copy, properly certified, and made at the expense of the applicant, shall be substituted for the original in the record of the suit.

Certified copy to be kept.

Receipt to be given for returned exhibit.

137. Whenever an exhibit once received by a Court of Justice and admitted in evidence is returned, a receipt shall be given by the party receiving it in a receipt-book kept for the purpose.

Court may send for papers from its own records or from other public Offices or Courts.

Except State papers.

138. Any Civil Court may of its own accord, or upon the application of any of the parties to a suit, send for, either from its own record or from any other public Office or Court, the record of any other suit or case, or any other official papers (not being documents relating to affairs of State the production of which would be contrary to good policy) and inspect the same, when the inspection of such record or papers shall appear likely to elucidate the facts of the suit before the Court, and to promote the ends of justice.

OF THE SETTLEMENT OF ISSUES.

Framing of issues.

139. At the first hearing of the suit the Court shall enquire and ascertain upon what questions of law or fact the parties are at issue, and shall thereupon proceed to frame and record the issues of law and fact on which the right decision of the case may depend. The Court may frame the issues from the allegations of fact which it collects from the oral examination of the parties or their pleaders, notwithstanding any difference between such allegations of fact and the allegations of fact contained in the written statements, if any, tendered by the parties or their pleaders.

140. If the Court shall be of opinion that the issues cannot

Court may examine witnesses or documents before framing the issues.

be correctly framed without the examination of some person other than the persons already before the Court or without the reading of some document not produced by any of such persons, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may compel the attendance of such person, or the production of the document by the person in whose hands it may be, by summons or other suitable process.

Amendment of issues. Additional issues.

141. At any time before the decision of the case, the Court may amend the issues or frame additional issues on such terms as to it shall seem fit, and all such amendments as may be necessary for the purpose of determining the real question or controversy between the parties shall be so made.

Of Issues by Agreement of Parties.

Questions of fact or law may by agreement be stated by the parties in the form of an issue.

142. When the parties to a suit are agreed as to the question or questions of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing, which shall not be subject to any stamp duty, that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, or that upon such finding some property specified in the agreement, and in dispute in the suit, shall be delivered by one of the parties to the other of them, or that upon such finding one or more of the parties shall do or perform some particular legal act, or shall refrain from doing or performing some particular act, specified in the agreement, and having reference to the matter in dispute.

Court, if satisfied that the agreement was executed *bona fide* may decree accordingly.

143. If the Court shall be satisfied, after an examination of the parties or their pleaders, and taking such evidence as it may deem proper, that the agreement was duly executed, by the parties, and that the parties have a *bona fide* interest in the decision of such question, and that the same is fit to be tried and decided, it may

proceed to record and try the same, and deliver its finding or opinion thereon in the same manner as if the issue had been framed by the Court, and may, upon the finding or decision on such issue, give judgment for the sum so agreed on or so ascertained as aforesaid, or otherwise according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

WHEN THE SUIT MAY BE DISPOSED OF AT THE FIRST HEARING.

If the parties are not at issue on any question of law or fact.

144. If at the first hearing of a suit it shall appear that the parties are not at issue on any question of law or fact, the Court may at once give judgment.

If the parties are at issue on questions of law or fact.

Court if satisfied may determine the issues and give judgment.

145. When the parties are at issue on some question of law or fact, and issues have been framed by the Court as hereinbefore provided, if the Court shall be satisfied that no further argument or evidence than such as the parties or their pleaders can at once supply is required upon any such of the issues of law or fact as may be sufficient for the decision of the suit, the Court, after hearing such argument and evidence, may proceed to determine such issue or issues, and if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons shall have been issued for the settlement of issues only or for the final disposal of the suit; otherwise the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence or for such further argument as the case may require. Provided that if the summons shall have been issued for the final disposal of the suit and either party shall fail without sufficient cause to produce the evidence on which he relies, the Court may at once give judgment.

Proviso where summons is for final disposal.

OF ADJOURNMENTS.

Court may grant time, or adjourn to a future day.

146. The Court may, if sufficient cause be shown, at any stage of the suit, grant time to the parties, or to either of them, and may from time to time adjourn the hearing of the suit; and in all such

cases the Court shall fix a day for the further hearing of the suit. Provided that in all such cases the party applying for time shall pay the costs occasioned by such adjournment, unless the Court shall otherwise direct.

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147. If, on any day to which the hearing of the suit may be adjourned, the parties or either of them shall not appear in person or by pleader, the Court may proceed to dispose of the suit in the manner specified in Section 110, Section 111, or Section 114 as the case may be, or may make such other order as may appear to be just and proper in the circumstances of the case.

How Court is to proceed if the parties fail to appear on the day fixed.

148. If either party to a suit to whom time may have been granted shall fail to produce his proofs, or to cause the attendance of his witnesses, or to perform any other act for which time may have been allowed, the Court shall proceed to a decision of the suit on the record, notwithstanding such default.

Court to proceed if either party fail to produce proofs or witnesses.

OF SUMMONING WITNESSES.

149. The parties or their pleaders may, at any time after the issue of the summons to the defendant, if the summons be for the final disposal of the suit, or after the issues have been recorded if the summons to the defendant be for the settlement of issues only, obtain, on application to the Court, summonses to witnesses or other persons to attend either to give evidence or to produce documents, and in any such summons the names of any number of persons may be inserted.

Application for summons.

150. No stamp duty shall be leviable in respect of any application for the summons of a witness or other person to attend either to give evidence or to produce a document, anything contained in any Regulation or Act notwithstanding.

No stamp duty on application for summons.

151. The person applying for a summons shall pay into Court such a sum of money as shall appear to the Court to be reasonable, to defray the travelling and other expenses of each witness, or other person mentioned in the summons, in passing to and from the Court in which he may be required to attend, and for one day's attendance. If the Court be a subordi-

Expenses of witnesses to be paid before issue of summons.

Scale of expenses.

nate Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) established by the Court to which such Court shall be immediately subordinate. The sum so paid into Court shall be tendered to the witness or other person at the time of serving the summons, if it can be served personally. If it shall appear to the Court that the sum paid into Court on account of the travelling and other expenses of the witness or other person in passing to and from the Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the witness or other person as may appear to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the goods of the person ordered to pay the same, or may discharge the witness without requiring him to give evidence. If it shall be necessary to detain the witness or other person summoned for a longer period than one day, the Court may from time to time order the party at whose instance he was summoned to pay into Court such sum as may be sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order the witness to be discharged without requiring him to give evidence.

Tender of expenses to witness.

If sum be not sufficient.

Expenses if witness is detained.

152. Every summons for the attendance of a witness or other person shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the witness or other person may be called on to produce shall be described in the summons with convenient certainty.

Time, place, and purpose of attendance to be specified in summons.

153. Any person whether a party to a suit or not may be summoned to produce a document, without being summoned to give evidence; and any person, summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

Summons to produce a document.

SERVICE OF SUMMONS ON A WITNESS.

How and when the summons shall be served.

154. Every summons to a witness or other person shall be served by exhibiting the original, and delivering or tendering a copy; and the service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the witness or other person, to allow him a reasonable time for preparation, and for travelling to the place at which his attendance is required.

Service to be on the witness, or a male member of his family.

155. Whenever it may be practicable, the service of the summons shall be upon the person thereby required to attend; but when he cannot be found, the service may be made on any adult male member of his family residing with him.

When the summons cannot be served, it is to be returned to the Court.

156. When the person required to attend cannot be found, and there is no adult male member of his family on whom the summons can be served, the serving Officer shall return the summons to the Court from whence it issued, with an endorsement thereon that he has been unable to serve it.

Time and manner of service to be endorsed on the summons.

157. The serving Officer shall, in all cases in which the summons has been served, endorse on the original summons the time when, and the manner in which it was served.

How a summons on a witness who resides in another jurisdiction is to be served.

158. If the person required to attend be resident within the jurisdiction of any other Court than that in which the suit is pending, the summons shall be transmitted by the Court in which the suit is pending, to any Court having jurisdiction at the place where the witness resides by which it can be most conveniently served; and the Court to which the summons is sent shall, upon receipt thereof, deliver the same to the Nazir or other proper Officer of such Court, to be served in the manner above directed; and upon the return of the summons by the serving Officer, it shall be transmitted to the Court from whence it originally issued.

When a witness absconds, his property may be attached.

159. If the summons for the attendance of any person either to give evidence or to produce a document, cannot be served in either of the ways hereinbefore specified, the Court, on being certified

thereof by the return of the serving Officer, and upon proof that the evidence of such witness or the production of the document is material, and that the witness or other person absconds or keeps out of the way for the purpose of avoiding the service of the summons, may cause a proclamation requiring the attendance of such person to give evidence, or produce the document, at a time and place to be named therein, to be affixed in some conspicuous place upon his house or place of abode; and if such person shall not attend at the time and place named in such proclamation, the Court may, at the instance of the party on whose application the summons was issued, make an order for the attachment of the movable and immovable property of such person, to such amount as the Court shall deem reasonable, not being in excess of the amount of the costs of attachment and of any fine to which the person may be liable under the provisions of the following Section.

How the Court is to proceed with the witness on his appearance.

160. If, on the attachment of the property, such witness or other person shall appear and satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as it shall deem fit. If such witness or other person shall not appear, or appearing shall fail to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not such a notice of the proclamation as aforesaid, it shall be lawful for the Court to order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which the Court may impose upon such witness or other person under the provisions of any law for the time being in force for the punishment of a witness who may abscond or keep out of the way in order to avoid the service of a summons. If the witness or other person shall pay into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

OF THE EXAMINATION OF PARTIES AS WITNESSES.

A party to a suit appearing in person may be examined either in his own behalf or on behalf of any other party.

161. When a party to a suit appears in person at any hearing of the suit, he may be examined as a witness, either in his own behalf or on behalf of any other party to the suit, in the same way as if he were not a party thereto.

Special application to be made for the examination of a party as a witness.

162. If any party to a suit shall require to enforce the attendance of any other party thereto as a witness, he shall, by himself or his pleader, make a special application to the Court for an order requiring the attendance of the party, and shall show to the satisfaction of the Court sufficient grounds in support of such application, otherwise a summons shall not be issued.

The Court may first issue a notice to show cause.

163. The Court, if it think fit, may, before making such order, cause notice to be given to the party or his pleader, fixing a day for such party to show cause why he should not attend and give evidence; and may also, from time to time, if necessary, for good and sufficient reason, enlarge the time for such purpose.

Court shall receive a written declaration in support of the cause shown.

164. In support of the cause shown, the Court shall receive any declaration in writing of the party, on unstamped paper, if signed by him and verified in the manner hereinbefore provided for the verification of plaints, and delivered into the Court by himself or his pleader.

If no sufficient cause be shown, summons to issue.

165. If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court shall enlarge the time for that purpose, the Court shall issue its order requiring the party to attend and give evidence.

Court may of its own accord at any time summon a witness.

166. If the Court shall think it necessary for the ends of justice to examine any party to the suit or to inspect any document in his possession or power, the Court may of its own accord in any stage of the suit cause such party to be summoned to attend as a witness to give evidence or to produce such document if in his possession or power on a day to be appointed in the summons, and may examine such party as a witness in open Court, or

may cause such party to be examined in such other manner as the Court may direct.

ATTENDACE OF WITNESSES, AND CONSEQUENCE OF NON-ATTENDANCE.

Persons summoned to give evidence must attend.

167 Any person who shall be summoned to appear and give evidence in a suit shall be bound to attend at the time and place named in the summons for that purpose.

Consequences of non-attendance by a witness.

168. If any person, on whom any summons to give evidence or produce a document shall have been served in either of the ways specified in Section 155, shall, without lawful excuse, fail to comply with the summons, the Court may order such person to be apprehended and brought before the Court. If such person abscond or keep out of the way, so that he cannot be apprehended or brought before the Court, his property shall be liable to attachment and sale in the manner and subject to the rules provided in Sections 159 and 160 with respect to a witness or other person on whom the service of a summons cannot be effected.

Consequences of refusal to give evidence.

169. If any witness, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may commit such witness to close custody for such reasonable time as it may deem proper, unless he shall, in the meantime, consent to give his evidence, or to produce the document. If after the expiration of such time the witness shall persist in his refusal, the Court may proceed to deal with him according to the provisions of any law for the time being in force for punishment of persons refusing to give evidence.

Consequence of non-attendance or refusal of a party to give evidence.

170. If any person, being a party to the suit, who shall be ordered to attend to give evidence or produce a document, shall, without lawful excuse, fail to comply with such order, or, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to produce any document in his custody or

possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may either pass judgment against the party so failing or refusing, or make such other order in relation to the suit as the Court may deem proper in the circumstances of the case.

Any person present in Court may be called upon to give evidence though not summoned.

171. Any person present in Court, whether a party to the suit or not, may be called upon by the Court to give evidence and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence or to produce such document, and shall be liable to be dealt with by the Court as a party or witness, as the case may be, would, under any of the preceding provisions, be liable to be dealt with for any refusal to obey the order of the Court.

When and how Witnesses are to be examined.

Witnesses to be examined at the hearing of the suit in open Court.

172. On the day appointed for the hearing of the suit or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court, in the presence and hearing, and under the personal direction and superintendence of the Judge. In cases in which an appeal lies to a higher tribunal, the evidence of each witness given upon such examination shall be taken down in writing, in the language in ordinary use in proceedings before the Court, by, or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties to the suit or their pleaders, or such of them as are in attendance, and shall, if necessary, be corrected, and shall be signed by the Judge. If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down in writing to be interpreted to him in the language in

In what form evidence shall be taken in appealable cases.

In what case deposition to be interpreted.

When evidence may be taken in English.

which it was given. Where all the parties to the suit present, and the pleaders of such as are absent, consent to have such evidence as is given in English taken down in English, the Judge may so take it down in his own hand. It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any party or his pleader shall require it.

Objection made to questions.

If any question put to a witness be objected to by either of the parties or their pleaders, and the Court shall allow the same to be put, the question and answer will be taken down and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together with the dicision of the Court upon the objection. The Court shall record such remarks as it may think material respecting the demeanor of the witness while under examination.

Memorandum of substance of the evidence to be made by Judge as each witness is examined.

In cases in which the evidence is not taken down in writing by the Judge himself, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substances of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall accompany the record. In cases in which an appeal does not lie

In what form evidence shall be taken in cases not appealable.

to a higher tribunal, it shall not be necessary to take down the depositions of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record. If the Judge shall be

If Judge be unable to make a memorandum of the evidence, reason of inability to be recorded.

prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and in cases not appealable shall cause such memorandum to be made in writing from his dictation in open Court and shall sign the same, and such memorandum shall form part of the record.

173. If a witness be about to leave the jurisdiction of the

A witness for sufficient cause be examined immediately.

Court, or other good and sufficient cause can be shown to the satisfaction of the Court why his examination should be taken immediately,

it shall be competent to the Court, upon the application of either party or of the witness, at any time after the institution of the suit, to take the examination of such witness forthwith, or on any day that may be fixed for that purpose, of which due notice shall be given to the parties if the day be fixed in their absence. The witness shall be examined, and his deposition shall be taken down in writing, in the manner hereinbefore prescribed; and the deposition so taken down may be read in evidence at any hearing of the suit.

Witness to be examined upon oath or affirmation, or according to the law for the time being in force.

174. All witnesses shall be examined upon oath or affirmation or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses.

Of Commissions to Examine absent Witnessess and make Local Enquiries.

Cases in which Court may issue a Commission to examine witnesses.

175. When the evidence of a witness is required who is resident at some place distant more than a hundred miles from the place where the Court is held, or who is unable from sickness or infirmity to attend before the Court to be personally examined, or is a person exempted by reason of rank or sex from personal appearance in Court; the Court may, of its own motion, or on the application of any of the parties to the suit, or on the representation of the witness, order a Commission to issue for the examination of such witness on interrogatories or otherwise; and may, by the same or any subsequent order, give all such directions for taking such examinations as may appear reasonable and just. If the witness be resident within the jurisdiction of the Court issuing the Commission, the Commission may be issued to any Officer of the Court, or to any subordidate Court, or to any other person or persons whom the Court issuing the Commission may think proper to appoint. If the witness be resident at some place which is beyond the jurisdiction of the Court issuing the Commission, and not within the local jurisdiction of Her Majesty's Supreme Court, but within the jurisdiction of the Sudder Court, the Commission shall ordinarily be issued to the Court within whose jurisdiction the witness may reside, and

When the witness resides within the Court's jurisdiction.

When the witness resides beyond the Court's jurisdiction, and not within the Supreme Court's jurisdiction, but within the jurisdiction of the Sudder Court.

which can most conveniently execute the same; but, under special circumstances, the Commission may be issued to any other person or persons whom the Court issuing the Commission may think proper to appoint.

When the witness is within the local jurisdiction of the Supreme Court.

176. If the witness be resident within the local jurisdiction of Her Majesty's Supreme Court the Commission shall ordinarily be issued to the Court of Small Causes held under Act IX. of 1850 (*for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay*), but may, under special circumstances, be directed to any person or persons whom the Court issuing the Commission may think proper to appoint.

When the witness is not within the jurisdiction of the Sudder Court or the Supreme Court, but within the British territories or the territories of any Native Prince or State in alliance with the British Government.

177. When the evidence of a witness is required, who is resident at some place not within the jurisdiction of the Sudder Court or of Her Majesty's Supreme Court, but within the British territories in India or within the territories of a Native Prince or State in alliance with the British Government, the Court, if it be satisfied that the evidence of such witness is necessary, may, of its own motion or on the representation of any of the parties to the suit, issue a Commission for the examination of the witness; provided that, if the suit be pending in any Court subordinate to the principal Civil Court of a district, such subordinate Court shall not issue the Commission, but the principal Civil Court of the District may issue the Commission on the application of the subordinate Court.

When the witness is beyond the said territories and not within the territories of any Native Prince or State in alliance with the British Government.

178. When the evidence of a witness is required, who is resident at some place beyond the said territories and not within the territories of a Native Prince or State in alliance with the British Government, the Sudder Court, if the suit in which the evidence of the witness is required be pending in that Court and the Court be satisfied that such evidence is necessary, may, of its own motion or on the application of any of the parties to the suit, issue a Commission to examine the witness; if the suit be not pending in the Sudder Court, that Court may issue the Commission on the application of the Court in which the suit is pending. In all such cases, the Com-

mission may be issued to any person or persons whom the Sudder Court may think proper to appoint.

Commission to be returned with the depositions of the witnesses.

179. After the Commission has been duly executed, it shall be returned, together with the deposition of the witness who may have been examined thereunder, to the Court out of which the Commission issued, unless otherwise directed by the order for issuing the Commission, in which case it shall be returned in terms of such order, and the Commission and the return thereto and the deposition of the witness who may have been examined under such Commission shall in all cases form part of the record of the suit.

When depositions may be read in evidence.

But no deposition taken under a Commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, without collusion, more than a hundred miles from the place where the Court is held, or exempted by reason of rank or sex from personal appearance in Court, or unless the Court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same.

Commission for local investigation.

180. In any suit or other judicial proceeding in which the Court may deem a local investigation to be requisite or proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of any mesne profits or damages, the Court may issue a Commission to an Officer of the Court appointed to execute such Commissions, or, if there be no such Officer, to any suitable person, directing him to make such investigation and to report thereon to the Court. In all such cases, unless otherwise directed by the order of appointment, the Commissioner shall have power to examine any witnesses who may be produced to him by the parties or any of them, the parties themselves, and any other persons whom he may think proper to call upon to give evidence in the matters referred to him; and also to call for and examine documents and other papers relevant to the subject of enquiry; and persons

not attending on the requisition of the Commissioner, or refusing to give their testimony or to produce any documents or other papers, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the report of the Commissioner, as they would incur for the same offences in suits tried before the Court. The Commissioner, after such local inspection as he may deem necessary, and after reducing to writing, in the manner hereinbefore prescribed for taking the depositions of witnesses in the presence of the judge, the depositions taken by him, shall return the depositions, together with his report in writing, subscribed with his name, to the Court. The report and depositions shall be taken as evidence in the suit and shall form part of the record; but it shall be competent to the Court, or to the parties to the suit or any of them, with the permission of the Court, to examine the Commissioner personally in open Court, touching any of the matters referred tohim or mentioned in his report, or the manner in which he may have conducted the investigation.

The report and depositions to be taken as evidence in the suit, but the Commissioner may be examined in person.

181. In any suit or other judicial proceeding in which an investigation or adjustment of accounts may be necessary, it shall be lawful for the Court to appoint such Officer or other person as beforesaid to be a Commissioner for the purpose of making such investigation or adjustment, and to direct that the parties or their attorneys or pleaders shall attend upon the Commissioner during such investigation or adjustment. In all such cases, the Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary for his information and guidance; and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry or also to report his own opinion on the point referred for his investigation. The proceedings of the Commissioner shall be received in evidence in the case, unless the Court may have reason to be dissatisfied with them; in which case the Court shall make such further enquiry as may be requisite, and shall pass such ultimate judgment or order as may appear to it to be right and proper in the circumstances of the case.

A Commissioner may be appointed to investigate and adjust accounts.

182. Whenever a Commission is issued either for taking evidence or for a local investigation or an investigation into accounts, the Court, before issuing the Commission, may order such sum as may be thought reasonable for the expenses of the Commission to be paid into Court by the party, at whose instance or for whose benefit the Commission is issued.

In cases of local investigation or investigation into accounts, expenses of Commission to be paid into Court, before issue thereof.

Of Judgment and Decree.

183. When the exhibits have been perused, the witnesses examined, and the parties heard in person or by their respective pleaders, the Court shall pronounce its judgment. The judgment shall be pronounced in open Court either immediately or on some future day, of which due notice shall be given to the parties or their pleaders.

When judgment is to be pronounced.

184. The judgment shall be written in the vernacular language of the Judge. Provided that if the vernacular language of the Judge be not English and the Judge be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language and prefer to write his judgment in it, the judgment may be written in English.

Judgment to be written in the vernacular language of the Judge.

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185. The judgment shall contain the point or points for determination, the decision thereupon, and the reasons for the decision, and shall be dated and signed by the Judge in open Court at the time of pronouncing it. Whenever the judgment is written in any other language than that which is in ordinary use in the Court, the judgment shall be translated into the language in ordinary use in the Court, and the translation shall also be signed by the Judge.

Judgment what to contain.

Judgment to be translated.

186. In all suits in which issues have been framed, the Court shall state its finding or decision on each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

Court to state its decision on each issue.

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187. The judgment shall in all cases direct by whom the costs of each party are to be paid, whether by

Judgment to direct

by whom costs are to be paid.

himself or by another party, and whether in whole or in what part or proportion; and the Court shall have full power to award and apportion costs in any manner it may deem proper.

What is included under the denomination of costs.

188. Under the denomination of costs are included the whole of the expenses necessarily incurred by either party on account of the suit, and in enforcing the decree passed therein, such as the expense of stamps, of summoning the defendants and witnesses, and of other processes, or of procuring copies of documents, fees of pleaders, charges of witnesses, and expenses of Commissioners either in taking evidence or in local investigations or in investigations into accounts.

Decree.

189. The decree shall bear date the day on which the judgment was passed. It shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the Register of the suit, and shall specify clearly the relief granted or other determination of the suit. It shall also state the amount of costs incurred in the suit and by what parties and in what proportions they are to be paid, and shall be signed by the Judge and sealed with the seal of the Court.

Decree for the recovery of a portion of immovable property.

190. When the suit is for land or other immovable property with specified boundaries, if the decree be for the recovery of a portion only of such property, it shall specify the boundaries of the land or property adjudged.

Decree for the delivery of movable property.

191. When the suit is for movable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Decree for damages for breach of contract.

192. When the suit is for damages for breach of contract, if it appear that the defendant is able to perform the contract, the Court with the consent of the plaintiff may decree the specific performance of the contract within a time to be fixed by the Court, and in such case shall award an amount of damages to be paid as an alternative if the contract is not preformed.

193. When the suit is for a sum of money due to the plaintiff,

In suits for money, decree may order certain interest to be paid on the principal sum adjudged.

the Court may in the decree order interest to be paid on the principal sum adjudged from the date of suit to the date of payment at such rate as the Court may think proper.

194. In all decrees for the payment of money, the Court may for any sufficient reason order that the amount shall be paid by instalments with or without interest.

Payment by instalments.

195. If the defendant shall have been allowed to set-off any demand against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which shall appear to be due to either party. The decree of the Court with respect to any sum awarded to the defendant shall have the same effect and be subject to the same rules as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

If set-off be allowed

Effect of decree.

196. When the suit is for land or other property paying rent, the Court may provide in the decree for the payment of mesne profits or rent on such land or other property from the date of the suit until the date of delivery of possession to the decreeholder with interest thereupon at such rate as the Court may think proper.

When the suit is for land, the Court may provide in the decree for payment of mesne profits with interest.

197. When the suit is for land and for mesne profits which have accrued thereon during a period prior to the date of suit, and the amount of such profits is disputed, the Court may either determine the amount prior to passing a decree for the land, or may pass a decree for the land and reserve the enquiry into the amount of mesne profits for the execution of the decree according as may appear most convenient.

Court may determine amount of mesne profits prior to passing decree or may reserve enquiry.

198. Certified copies of the decree and judgment shall be furnished to the parties or their pleaders on application to the Court, and on the production of the necessary stamps where Stamps are required by any law for the time being in force. The application may be made either orally or by writing on unstamped paper.

Certified copies of the decree and judgment to be furnished.

CHAPTER IV.

Execution of Decrees.

199. If the decree be for land or other immovable property the same shall be delivered over to the party to whom it shall have been adjudged.

Decree for immovable property.

200. If the decree be for any specific movable, or for the specific performance of any contract, or for the performance of any other particular act it shall be enforced by the seizure, if practicable, of the specific movable and the delivery thereof to the party to whom it shall have been adjudged, or by imprisonment of the party against whom the decree is made, or by attaching his property and keeping the same under attachment until further order of the Court, or by both imprisonment and attachment if necessary; or if alternative damages be awarded, by levying such damages in the mode hereinafter provided for the execution of a decree for money.

Decree for movable property, performance of contract, or alternative.

201. If the decree be for money, it shall be enforced by the imprisonment of the party against whom the decree is made, or by the attachment and sale of his property, or by both if necessary; and if such party be other than a defendant, the decree may be enforced against him in the same manner as a decree may be enforced under the provisions of this Chapter against a defendant. When the decree is against Government or against any Officer acting on behalf of Government, if the Officer whose duty it is to satisfy the decree neglect or refuse to satisfy the same, the Court shall report the case through the Sudder Court for the orders of Government, and execution shall not issue on the decree unless the same shall remain unsatisfied for the space of three months from the date of such report.

Decree for money.

202. If the decree be for the execution of a conveyance or for the endorsement of a negotiable instrument, and the party ordered to execute or endorse such conveyance or negotiable instrument shall neglect or refuse so to do, any party interested in having the same executed or endorsed may prepare a conveyance or endorsement of the instrument in accordance with the terms of the decree, and tender the same to

Decrees for execution of conveyances, or endorsement of negotiable instruments.

the Court, for execution upon the proper stamp (if any is required by law), and the signature thereof by the judge shall have the same effect as the execution or endorsement thereof by the party ordered to execute.

Decree against representatives of deceased persons.

203. If the decree be against a party as the representative of a deceased person, and such decree be for money to be paid out of the property of the deceased person, it may be executed by the attachment and sale of any such property, or, if no such property can be found and the defendant fail to satisfy the Court that he has duly applied such property of the deceased as shall be proved to have come into his possession, the decree may be executed against the defendant to the extent of the property not duly applied by him, in the same manner as if the decree had been against the defendant personally.

Decree against sureties.

204. Whenever a person has become liable as security for the performance of a decree or of any part thereof, the decree may be executed against such person to the extent to which he has rendered himself liable, in the same manner as a decree may be enforced against a defendant.

What property liable to attachment and sale in execution of a decree.

205. The following property is liable to attachment and sale in execution of a decree, namely, lands, houses, goods, money, bank-notes, cheques, bills of exchange, promissory notes, Government securities, bonds, or other securities for money, debts, shares in the capital or joint-stock of any Railway, Banking, or other Public Company or Corporation, and all other property whatsoever, movable or immovable, belonging to the defendant, and whether the same be held in his own name or by another person in trust for him, or on his behalf.

Payment of monies under decrees &c.

206. All monies payable under a decree shall be paid into the Court, whose duty it is to execute the decree, unless such Court or the Court which passed the decree shall otherwise direct.

Adjustment of decree to be made through the Court.

No adjustment of a decree in part or in whole shall be recognized by the Court unless such adjustment be made through the Court or be certified to the Court by the person in whose favor the decree has been made or to whom it has been transferred.

Application for Execution.

207. When any party in whose favor a decree has been made is desirous of enforcing the same, he shall apply to the Court whose duty it is to execute the decree either in person or through his pleader in the suit or some other pleader duly appointed to act for him in that behalf. If there be two or more decree-holders, one or more of them may make the application, if the Court shall see sufficient cause for allowing him or them to make such application; and the Court shall in such case pass such order as it may deem necessary for protecting the interests of the other decree-holders.

Application for execution how to be made.

208. If a decree shall be transferred by assignment or by operation of law from the original decree-holder to any other person, application for the execution of the decree may be made by the person to whom it shall have been so transferred or his pleader; and if the Court shall think proper to grant such application, the decree may be executed in the same manner as if the application were made by the original decree-holder.

Application by whom to be made, if decree be transferred from original decree-holder to another person.

209. If there be cross-decrees between the same parties for the payment of money, execution shall be taken out by that party only who shall have obtained a decree for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum, and if both sums shall be equal, satisfaction shall be entered upon both decrees.

Cross-decrees.

The above rules shall apply to decrees sent to a Court for execution as well as to decrees in the same Court.

Whenever a suit shall be pending in any Court against the holder of a decree of such Court, by the person or persons against whom the decree was passed, the Court may, if it appear just and reasonable to do so, stay execution on the decree either absolutely or on such terms as it may think just, until a decree shall be passed in the pending suit.

210. If any person against whom a decree has been made

If the person against whom a decree is made shall die before execution, application may be made against his legal representative or estate.

shall die before execution has been fully had thereon, application for execution thereof may be made against the legal representative or the estate of the person so dying as aforesaid; and if the Court shall think proper to grant such application, the decree may be executed accordingly.

Decree how to be executed against legal representative.

211. If the decree be ordered to be executed against the legal representative it shall be executed in the manner provided in Section 203 for the execution of a decree for money to be paid out of the property of a deceased person.

Form of application for execution of a decree.

212. The application for execution of a decree shall be in writing, and shall contain in a tabular form the following particulars, namely, the number of the suit, the names of the parties, the date of the decree, whether any appeal has been preferred from the decree, and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree; the amount of the debt or damages due upon it, or other relief granted by the decree; the amount of costs, if any were awarded; the name of the person against whom the enforcement of the decree is sought; and the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, the arrest and imprisonment of the person named, or attachment of his property, or otherwise as the case may be.

Further particulars when the application is for an attachment of immovable property.

213. When the application is for an attachment of any land or other immovable property belonging to the defendant, it shall be accompanied with an inventory or list of such property, containing such a description of the property as may be sufficient to identify it, together with a specification of the defendant's share or interest therein, to the best of the applicant's belief and so far as he has been able to ascertain the same. And where the property is an estate paying revenue to Government or any portion of such estate, the application for an attachment shall be accompanied with an authenticated extract from the Register of the Collector's Office, specifying the

revenue of such estate, and the names and (where registered) the shares of the registered proprietors.

The application for an attachment of movable property may be general, or may be accompanied with an inventory of the property to be attached.

214. Where the application is for an attachment of the defendant's movable property or any part thereof, it may be accompanied with an inventory or list of the property to be attached, containing a reasonably accurate description thereof; or the applicant may apply for a general attachment of the defendant's movable property wheresoever the same can be found, to the amount of the judgment and costs.

Procedure on receiving the application.

215. The Court, on receiving any application for execution of a decree, containing the particulars above mentioned, or such of them as may be applicable to the case, shall cause the same to be compared with the original decree contained in the record of the suit, and if they shall be found to correspond therewith, shall enter a note of the application, and the date on which it was made in the Register of the suit. If the particulars shall not be found to correspond with the original decree, the Court shall either return the application for correction to the person making it, or shall, with the consent of such person, cause the necessary correction to be made. If the application be admitted, the Court shall order execution of the decree according to the nature of the application.

MEASURES REQUIRED IN CERTAIN CASES PRELIMINARY TO THE ISSUE OF THE WARRANT.

In certain special cases, notice to show cause why the decree should not be executed shall be issued.

216. If an interval of more than one year shall have clapsed between the date of the decree and the application for its execution, or if the enforcement of the decree be applied for against the heir or representative of an original party to the suit, the Court shall issue a notice to the party against whom execution may be applied for requiring him to show cause, within a limited period to be fixed by the Court, why the decree should not be executed against him. Provided that no such notice shall be necessary in consequence of an interval of more than one year having elapsed between the

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date of the decree and the application for execution, if the application be made within one year from the date of the last order passed on any previous application for execution; and provided further that no such notice shall be necessary in consequence of the application being against an heir or representative, if upon a previous application for execution against the same person, the Court shall have ordered execution to issue against him.

Procedure after issue of notice.

217. When such notice is issued, if the party shall not attend in person or by a pleader, or shall not show sufficient cause to the satisfaction of the Court why the decree should not be forthwith executed, the Court shall order it to be executed accordingly. If the party shall attend in person or by a pleader, and shall offer any objection to the enforcement of the decree, the Court shall pass such order as in the circumstances of the case may appear to be just and proper.

Application for a general attachment of movable property.

218. Where the application is for a general attachment of the movable property of the defendant, it shall be competent to the Court, if it shall think proper, before issuing an order for such attachment, to require the applicant to give security to the satisfaction of the Court, in such sum as may be considered adequate, for any injury that may be occasioned by the attachment of property belonging to any other person than the defendant.

Before granting order, Court may make certain enquiries as to the property to be attached

219. Before granting the order for a general attachment or at the instance of the plaintiff at any time after judgment and before complete execution of the decree, the Court may summon the person against whom the application is made and examine him as to the property liable to be seized in satisfaction of the judgment. The Court may also, of its own motion or at the instance of any person interested in the enquiry, summon any other person whom it may think necessary and examine him in respect to such property, and may require the person summoned to produce all deeds and documents in his possession or power relating to such property.

Rules applicable to the summoning and examination of parties and witnesses after judgment.

220. In all cases in which a summons may be issued for the attendance of a party to a suit or any other person at any time after judgment, the rules applicable to the summoning and examination

of parties and witnesses after issues recorded, shall apply to the party or witnesses so summoned.

ISSUE OF THE WARRANT.

221. When all necessary preliminary measures have been taken, where any such are required, the Court, unless it see cause to the contrary, shall issue the proper warrants for the execution of the decree.

Warrant when to issue.

222. Every warrant for the execution of a decree shall bear the date of the day on which it is issued, and shall be signed by the Judge and sealed with the seal of the Court, and delivered to the Nazir or other proper Officer of the Court. A day shall be specified in the warrant on or before which it must be executed, and the Nazir or other proper Officer shall endorse upon the warrant the day and the manner in which it was executed, or if it was not executed the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

Latest day of execution to be written in warrant, and time and manner of execution to be endorsed.

OF THE EXECUTION OF DECREES FOR IMMOVABLE PROPERTY.

223. If the decree be for a house, land, or other immovable property in the occupancy of a defendant or some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the institution of the suit, the Court shall order delivery thereof to be made by putting the party to whom the house, land, or other immovable property may have been adjudged, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and if need be, by removing any person who may refuse to vacate the same.

How immovable property is to be delivered when in the occupancy of a defendant or of some person under him.

224. If the decree be for land or other immovable property in the occupancy of ryots or other persons entitled to occupy the same, the Court shall order delivery thereof to be made by affixing a copy of the warrant in some conspicuous place on the land or other immovable property, and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be

How it is to be delivered when in the occupancy of ryot.

customary, at some convenient place or places, the substance of the decree in regard to the property.

225. If the decree be for the division of an estate or for the separate possession of a share of an undivided estate paying revenue to Government, the division of the estate or the separation of the share shall be made by the Collector under the orders of the Court according to the rules in force for the partition of an estate paying revenue to Government.

Division of estate or separation of share how to be made.

226. If in the execution of a decree for land or other immovable property, the Officer executing the same shall be resisted or obstructed by any person, the person in whose favor such decree was made may apply to the Court at any time within one month from the time of such resistance or obstruction. The Court shall fix a day for investigating the complaint and shall summon the party against whom the complaint is made to answer the same.

Obstruction to execution of decree for immovable property.

227. If it shall appear to the satisfaction of the Court that the obstruction or resistance was occasioned by the defendant or by some person at his instigation on the ground that the land or other immovable property is not included in the decree, or on any other ground, the Court shall enquire into the matter of the complaint and pass such order as may be proper under the circumstances of the case.

Obstruction by defendant.

228. If the Court shall be satisfied, after such investigation of the facts of the case as it may deem proper, that the resistance or obstruction complained of was without any just cause and that the complainant is still resisted or obstructed in obtaining effectual possession of the property adjudged to him by the decree, by the defendant or some person at his instigation, the Court may, at the instance of the plaintiff and without prejudice to any proceedings to which such defendant or other person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, commit the defendant or such other person to close custody for such period not exceeding thirty days as may be necessary to prevent the continuance of such obstruction or resistance.

How defendant may be dealt with, if he persists in obstructing the complainant.

229. If it shall appear to the satisfaction of the Court that

the resistance or obstruction to the execution of the decree has been occasioned by any person, other than the defendant, claiming *bonâ fide* to be in possession of the property on his own account or on account of some other person than the defendant, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant, and the Court shall, without prejudice to any proceedings to which the claimant may be liable under any law for the time being in force for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of this Act, and shall pass such order for staying execution of the decree, or executing the same, as it may deem proper in the circumstances of the case.

Obstruction by a *bonâ fide* claimant other than the defendant.

230. If any person other than the defendant shall be dispossessed of any land or other immovable property in execution of a decree and such person shall dispute the right of the decree-holder to dispossess him of such property under the decree on the ground that the property was *bonâ fide* in his possession on his own account or on account of some other person than the defendant, and that it was not included in the decree, or, if included in the decree, that he was not a party to the suit in which the decree was passed, he may apply to the Court within one month from the date of such dispossession; and if, after examining the applicant, it shall appear to the Court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff, and the decree-holder as defendant, and the Court shall proceed to investigate the matter in dispute in the same manner and with the like powers as if a suit for the property had been instituted by the applicant against the decree-holder.

Procedure in certain cases if person dispossessed of immovable property dispute the right of decree-holder to be put into possession of such property.

231. The decision passed by the Court under either of the last two Sections shall be of the same force as a decree in an ordinary suit, and shall be subject under the rules applicable to appeals

Appeal from decision under the last two Sections.

from decrees; and no fresh suit shall be entertained in any Court between the same parties claiming under them in respect of the same cause of action.

OF THE EXECUTION OF DECREES FOR MONEY BY ATTACHMENT OF PROPERTY.

Attachment of property in execution of decree for money, to be as follows.

232. If the decree be for money, and the amount thereof is to be levied from the property of the person against whom the same may have been pronounced, the Court shall cause the property to be attached in the manner following.

Attachment of movable property in possession of defendant, by seizure.

233. Where the property shall consist of goods, chattels, or other movable property in the possession of the defendant, the attachment shall be made by actual seizure, and the Nazir or other Officer shall keep the same in his own custody, or in the custody of his subordinates, and shall be responsible for the due custody thereof.

Attachment by prohibitory order of movable property, to which defendant is entitled subject to a lien.

234. Where the property shall consist of goods, chattels, or other movable property to which the defendant is entitled subject to a lien or right of some other person to the immediate possession thereof, the attachment shall be made by a written order prohibiting the person in possession from giving over the property to the defendant.

Attachment of immovable property by prohibitory order.

235. Where the property shall consist of lands, houses, or other immovable property, the attachment shall be made by a written order prohibiting the defendant from alienating the property by sale, gift, or in any other way, and all persons from receiving the same by purchase, gift, or otherwise.

Attachment of debts not being negotiable instruments, and of shares in public Companies, &c. by prohibitory order.

236. Where the property shall consist of debts not being negotiable instruments, or of shares in any Railway, Banking, or other public Company or Corporation, the attachment shall be made by a written order prohibiting the creditor from receiving the debts, and the debtor from making payment thereof to any person whomsoever, until the further order of the Court, or prohibiting the person in whose name the shares may be standing from making any transfer of the shares or receiving

payment of any dividends thereof, and the Manager, Secretary, or other proper Officer of the Company or Corporation from permitting any such transfer or making any such payment until such further order.

Attachment of money or securities in deposit in a Court of Justice or with a Government Officer, by notice.

237. Where the property shall consist of money, or of any security, in deposit in any Court of Justice or in the hands of any Officer of Government, which is or may become payable to the defendant or on his behalf, the attachment shall be made by a notice to such Court or Officer requesting that the money or security may be held subject to the further order of the Court by which the notice may be issued. Provided that, if such money or security is in deposit in any Court of Justice, any question of title or priority which may arise between the decree-holder and any other person, not being the defendant, claiming to be interested in such money or security by virtue of any assignment, attachment, or otherwise, shall be determined by the Court in which such money or security is in deposit.

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Attachment of negotiable instruments by seizure.

238. Where the property shall consist of a negotiable instrument, the attachment shall be made by actual seizure, and the Nazir or other Officer shall bring the same into Court, and such instrument shall be held subject to the further orders of the Court.

When the attachment is by prohibitory order, how the order is to be made known.

239. In the case of goods, chattels, or other movable property not in the possession of the defendant, the written order shall be fixed up in some conspicuous part of the Court-house, and a copy of the order shall be delivered or sent registered by post to the person in possession of the property. In the case of lands, houses, or other immovable property, the written order shall be read aloud at some place on or adjacent to such lands, houses, or other property, and shall be fixed up in some conspicuous part of the Court-house; and when the property is land or any interest in land, the written order shall also be fixed up in the Office of the Collector of the Zillah in which the land may be situated. In the case of debts, the written order shall be fixed up in some conspicuous part of the Court-

house, and copies of the written order shall be delivered or sent registered by post to each individual debtor. And in the case of shares in the capital or joint-stock of any Railway, Banking, or other public Company or Corporation, the written order shall in like manner be fixed up in some conspicuous part of the Court-house, and a copy of the order shall be delivered or sent registered by post to the Manager, Secretary, or other proper Officer of the Company or Corporation.

Any private alienation of property after attachment to be null and void.

240. After any attachment shall have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order after it shall have been duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, or ortherwise, and any payment of the debt or debts or dividends or shares to the defendant during the continuance of the attachment, shall be null and void.

Payment by a debtor who has been prohibited from making payment to his creditor.

241. In every case in which a debtor shall be prohibited from making payment of his debt to the creditor, he may pay the amount into Court and such payment shall have the same effect as payment to the party entitled to receive the debt.

The Court may direct money or bank-notes to be paid to the plaintiff;

or other attached property to be sold, and proceeds to be paid to him.

242. In all cases of attachment under the preceding Sections, it shall be competent to the Court, at any time during the attachment, to direct that any part of the property so attached as shall consist of money or bank-notes, or a sufficient part thereof, shall be paid over to the party applying for execution of the decree; or that any part of the property so attached as may not consist of money or bank-notes, so far as may be necessary for the satisfaction of the decree, shall be sold, and that the money which may be realized by such sale, or a sufficient part thereof, shall be paid to such party.

Where the property attached consists of debts or immovable property, a manager may be appointed.

243. When the property attached shall consist of debts due to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immovable property, it shall be competent to the Court to appoint a manager

of the said property, with power to sue for the debts, and to collect the rents or other receipts and profits of the land or other immovable property, and to execute such deeds or instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits, or receipts towards the payment of the amount of the decree and costs; or when the property attached shall consist of land, if the judgment debtor can satisfy the Court that there is reasonable ground to believe that the amount of the judgment may be raised by the mortgage of the land, or by letting it on lease, or by disposing by private sale of a portion of the land or of any other property belonging to the judgment debtor, it shall be competent to the Court, on the application of the judgment debtor, to postpone the sale for such period as it may think proper to enable the judgment debtor to raise the amount. In any case in which a manager shall be appointed under this Section, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct.

Court may postpone sale of land if satisfied that amount of judgment may be raised by mortgage, &c.

Manager to render accounts.

244. When in any District, where land paying revenue to Government is ordinarily sold by the Collector, as provided in Section 248, the property attached shall consist of any such land, or of a share in any such land, if the Collector shall represent to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Collector, on security for the amount of the decree or for the value of such land or share being given, to make provision for such satisfaction in the manner recommended by the Collector, instead of proceeding to a public sale of the land or share.

When Court may authorize Collectors to stay public sale of land.

On security being given.

245. If the amount decreed with costs and all charges and expenses which may be incurred by the attachment be paid into Court, or if satisfaction of the decree be otherwise made, an order shall be issued for the withdrawal of the attachment; and if the defendant shall desire it and shall deposit in Court a sum sufficient to cover the expense, the order shall be proclaimed or inti-

Order for withdrawal of attachment after satisfaction of the decree.

mated in the same manner as hereinbefore prescribed for the proclamation or intimation of the attachment; and such steps shall be taken as may be necessary for staying further proceedings in execution of the decree.

Of Claims to Attached Property.

How claims and objections to sale of attached property are to be investigated.

246. In the event of any claim being preferred to, or objection offered against the sale of lands or any other immovable or movable property which may have been attached in execution of a decree or under any order for attachment passed before judgment, as not liable to be sold in execution of a decree against the defendant, the Court shall, subject to the proviso contained in the next succeeding Section, proceed to investigate the same with the like powers as if the claimant had been originally made a defendant to the suit, and also with such powers as regards the summoning of the original defendant as are contained in Section 220. And if it shall appear to the satisfaction of the Court that the land or other immovable or movable property was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying rent to him at the time when the property was attached, or that, being in the possession of the party himself at such time, it was so in his possession not on his own account or as his own property, but on account of or in trust for some other person, the Court shall pass an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the Court that the land or other immovable or movable property was in possession of the party against whom execution is sought, as his own property, and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying rent to him at the time when the property was attached, the Court shall disallow the claim. The order which may be passed by the Court under this Section shall not be subject to appeal, but the party against whom the order may be given shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

247. The claim or objection shall be made at the earliest op-

Claims and objections should be preferred at the earliest opportunity.

portunity to the Court which shall have ordered the attachment; and if the property to which the claim or objection applies, shall have been advertized for sale, the sale may (if it appears necessary) be postponed for the purpose of making the investigation mentioned in the last preceding Section. Provided that no such investigation shall be made if it appear that the making of the claim or objection was designedly and unnecessarily delayed, with a view to obstruct the ends of justice. The order disallowing the investigation shall not be subject to appeal, and the claimant shall be left to prosecute his claim by a regular suit.

Of Sales in execution of Decrees.

Sales to be by public auction.

248. Sales in execution of decrees shall be conducted by an Officer of the Court or by any other person whom the Court may appoint, and shall in all cases be made by public auction in manner hereinafter mentioned. Provided that if the property to be sold shall consist of negotiable securities or of shares in any Railway, Banking, or other public Company or Corporation, it shall be competent to the Court, instead of directing the sale to be made by public auction, to authorize the sale of such securities or shares through a broker at the market-rate of the day. If the property to be sold shall be land paying revenue to Government and the Government shall so direct, the sale shall be conducted by the Collector on the requisition of the Court.

Exception as to negotiable securities and shares in public Companies.

Sale by Collector of lands paying revenue to Government.

Notification of sales by public auction.

249. In all cases of intended sale by public auction, whether of movable or immovable property, in execution of a decree, a proclamation of the intended sale, specifying the time and place of sale, the property to be sold, the revenue assessed upon the state when the property to be sold is an estate or a part of an estate paying revenue to Government, and the amount for the recovery of which the sale is ordered, together with any other particulars that the Court may think necessary, shall be made in the current language of the District. The proclamation shall also declare that the sale

extends only to the right, title, and interest of the defendant in the property specified therein. Such proclamation shall be made on the spot where the property is attached by beat of drum or in such other mode as may be customary; and a written notification to the same effect shall be affixed in the Court-house of the Judge who shall have ordered the sale, and in some conspicuous spot in the town or village in which the attachment may have taken place. When the property ordered to be sold may consist of land or of any right or interest in land, the written notification shall also be affixed in the Office of the Collector of the District in which such land is situate and in the Court-house of the principal Civil Court of the District where the Court which ordered the sale is subordinate to such Court. The sale shall not take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the notification shall have been affixed in the Court-house of the Judge ordering the sale.

Time of sale.

250. The usual process for attachment and sale when the property to be attached consists of goods, chattels, or other personal estate other than debts, may be issued either successively or simultaneously as the Court directing the sale may in each instance think proper.

The process for attachment and sale may in certain cases be issued simultaneously.

251. In all cases of sale of movable property, the price of every lot shall be paid for at the time of sale or as soon after as the Officer holding the sale shall direct, and in default of such payment the property shall forthwith be again put up and sold. On payment of the purchase money, the Officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

Mode of payment on sale of movable property.

252. No irregularity in the sale of movable property under an execution, shall vitiate the sale; but any person who may sustain any injury by reason of such irregularity may recover damages by a suit in Court.

Irregularity not to vitiate sale of movable property, but any person injured may recover damages by suit.

253. In all cases of sale of immovable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

Deposit by purchaser in case of sale of immovable property.

254. The full amount of purchase money shall be made good by the purchaser before sunset of the fifteenth day from that on which the sale of the property took place, or if the fifteenth day be a Sunday or other close holiday, then on the first office day after the fifteenth day; and in default of payment within such period, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold. If the proceeds of the sale which is eventually consummated be less than the price bid by such defaulting purchaser, the difference shall be leviable from him under the rules for enforcing the payment of money in satisfaction of a decree of Court.

When full amount of purchase money to be made good.

Procedure on default.

Defaulting purchaser answerable for loss by re-sale.

255. Every re-sale of immovable property in default of payment of the purchase money shall be made after the issue of a fresh notification in the manner and for the period prescribed for original sales.

Notification on re-sale of immovable property.

256. No sale of immovable property shall become absolute until the sale has been confirmed by the Court. At any time within thirty days from the date of the sale, application may be made to the Court to set aside the sale on the ground of any material irregularity in publishing or conducting the sale, but no sale shall be set aside on the ground of such irregularity unless the applicant shall prove to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

Confirmation of sale.

257. If no such application as is mentioned in the last preceding Section be made, or if such application

The sale, if not

objected to for irregularity, or if the objection is disallowed, shall become absolute.

be made and the objection be disallowed, the Court shall pass an order confirming the sale; and in like manner if such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale for irregularity. If the objection be allowed, the order made to set aside the sale shall be final; if the objection be disallowed, the order confirming the sale shall be open to appeal; and such order, unless appealed from, and if appealed from, then the order passed on the appeal, shall be final; and the party against whom the same has been given shall be precluded from bringing a suit for establishing his claim.

When the order to set aside a sale shall be open to appeal.

258. Whenever a sale of immovable property is set aside, the purchaser shall be entitled to receive back his purchase money with or without interest, in such manner as it may appear proper to the Court to direct in each instance.

If the sale be set aside price to be returned to purchaser.

259. After a sale of immovable property shall have become absolute in manner aforesaid, the Court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right, title, and interest of the defendant in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title, and interest.

Certificate to be granted to the purchasers of land.

260. The certificate shall state the name of the person who at the time of sale is declared to be the actual purchaser, and any suit brought against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Certificate to state the name of actual purchaser.

261. Where the property sold shall consist of goods, chattels, or other movable property in the possession of the defendant, or to the immediate possession of which the defendant is entitled, and of which actual seizure has been made, the property shall be delivered to the purchaser.

Delivery of movable property in the possession of defendant.

262. Where the property sold shall consist of goods, chattels, or other movable property to which the defendant is entitled subject to a lien or right of any person to the immediate possession thereof, the delivery to the purchaser shall as far as practicable be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser thereof.

Delivery of movable property to which defendant is entitled subject to lien.

263. If the property sold shall consist of a house, land, or other immovable property, in the occupancy of a defendant or some person on his behalf or of some person claiming under a title created by the defendant subsequently to the attachment of such property, the Court shall order delivery thereof to be made by putting the party to whom the house, land, or other immovable property may have been sold, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same.

Delivery of immovable property in the occupancy of defendants, &c.

264. If the property sold shall consist of land or other immovable property in the occupancy of ryots or other persons entitled to occupy the same, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the land or other immovable property, and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, that the right, title, and interest of the defendant has been transferred to the purchaser.

Delivery of immovable property in the occupancy of ryots, &c.

265. Where the property sold shall consist of debts not being negotiable instruments or of shares in any Railway, Banking, or other public Company or Corporation, the delivery thereof shall be by a written order of the Court prohibiting the creditor from receiving the debts and the debtor from making payment thereof to any person or persons except the purchaser, or prohibiting the person in whose name the shares may be standing, from making any transfer of the shares to any person except the purchaser, or receiving payment of any dividends thereon, and the Manager, Secretary, or other proper Officer of the Com-

Delivery of debts not being negotiable instruments, and of shares in public Companies.

pany or Corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Delivery of negotiable securities of which actual seizure has been made.

266. Where the property sold shall consist of negotiable of which actual seizure has been made, the same shall be delivered to the purchaser thereof.

Transfer of securities and shares.

267. If the endorsement or conveyance of the party in whose name any negotiable security or any share in a public Company or Corporation is standing, shall be required to transfer the same, the Judge may endorse the security or the certificate of the share or may execute such other document as may be necessary for transferring the same. The endorsement or execution shall be in the following form or to the like effect—" A. B. by C. D. Judge of the Court of *(or as the case may be)*; in a suit by E. F. *versus* A. B." Until the transfer of such security or share, the Judge may, by order, appoint some person to receive any interest or dividend due thereon, and to sign receipts for the same ; and any endorsement made or document executed or receipts signed as aforesaid shall be as valid and effectual for all purposes, as if the same had been made or executed or signed by the party himself.

Resisting or obstructing purchasers in obtaining possession of property.

268. If the purchaser of any immovable property sold in execution of a decree shall be resisted or obstructed in obtaining possession of the property, the provisions contained in Sections 226, 227, and 228 relating to resistance or obstruction to a party in whose favor a suit has been decreed in obtaining possession of the property adjudged to him, shall be applicable in the case of such resistance or obstruction.

Obstruction by claimants other than defendants.

269. If it shall appear that the resistance or obstruction to the delivery of possession was occasioned by any person other than the defendant claiming a right to the possession of the property sold as proprietor, mortgagee, lessee, or under any other title, or if in the delivery of possession to the purchaser any such person claiming as aforesaid shall be dispossessed, the Court, on the complaint of the purchaser, or of such person claiming as aforesaid, if made within one month from the date of such resistance or obstruction or of such dispossession as the case may be, shal

enquire into the matter of the complaint and pass such order as may be proper in the circumstances of the case. Theo rder shall not be subject to appeal, but the party against whom it is given shall be at liberty to bring a suit to establish his right at any time within one year from the date thereof.

Attaching creditor to be first paid out of property attached.

270. Whenever a property is sold in execution of decree, the person on whose application such property was attached shall be entitled to be first paid out of the proceeds thereof, notwithstanding a subsequent attachment of the same property by another party in execution of a prior decree.

Surplus to be rateably distributed among decree-holders who have taken out execution prior to the order for distribution.

271. If, after the claim of the person on whose application the property was attached has been satisfied in full from the proceeds of the sale, any surplus remain, such surplus shall be distributed rateably amongst any other persons who prior to the order for such distribution may have taken out execution of decrees against the same defendant and not obtained satisfaction thereof. Provided that, when any property is sold subject to a mortgage, the mortgagee shall not be entitled to share in any surplus arising from such sale.

Proviso where property is sold subject to a mortgage.

Court may on application order another decree-holder to be satisfied out of proceeds of property attached under a decree obtained fraudulently.

272. If it shall appear to the Court, upon the application of a decree-holder, that any other decree under which property has been attached was obtained by fraud or other improper means, the Court may order that the applicant shall be satisfied out of the proceeds of the property attached so far as the same may suffice for the purpose if such other decree be a decree of that Court, or, if it be a decree of another Court, may stay the proceedings to enable the applicant to obtain a similar order from the Court by which the decree was made.

OF ARREST IN EXECUTION OF DECREES FOR MONEY.

On what grounds, application for discharge may be made.

273. Any person arrested under a warrant in execution of a decree for money may, on being brought before the Court, apply for his discharge on the ground that he has no present means of

paying the debt, either wholly or in part, or, if possessed of any property, that he is willing to place whatever property he possesses at the disposal of the Court. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family and necessary implements of his trade), and of the places respectively where such property is to be found, or shall state that, with the exceptions above-mentioned, the applicant is not possessed of any property, and the application shall be subscribed and verified by the applicant in the manner hereinbefore prescribed for subscribing and verifying plaints.

Form of application.

Verification.

274. Upon such application being made, the Court shall examine the applicant in the presence of the plaintiff or his pleader as to his then circumstances, and as to his future means of payment, and shall call upon the plaintiff to show cause why he does not proceed against any property of which the defendant is possessed and why the defendant should not be discharged; and should the plaintiff fail to show such cause, the Court may direct the discharge of the defendant from custody. Pending any enquiry which the Court may consider it necessary to make into the allegations of either party, the Court may leave the defendant in the custody of the Officer of the Court to whom the service of the warrant was entrusted, on the defendant making the necessary deposit for paying the fees of such Officer; or if the defendant furnish good and sufficient security for his appearance at any time when called upon while such enquiry is being made, his surety or surties undertaking in default of such appearance to pay the amount mentioned in the warrant, the Court may release the defendant on such security.

Procedure on application.

275. The discharge of the defendant under the last preceding Section shall not protect him from being arrested again and imprisoned if it should be shown that, in the application made by him, he had been guilty of any concealment or of wilfully making any false statement respecting the property be-

Defendant liable to be again arrested if proved guilty of fraudulent concealment of property, &c.

longing to him, whether in possession or in expectancy or held for him in trust, or had fraudulently concealed, transferred, or removed any property, or had committed any other act of bad faith; nor shall such discharge exempt from attachment and sale any property then in the possession of the defendant, or of which he may afterwards become possessed.

OF THE EXECUTION OF DECREES BY IMPRISONMENT.

Subsistence-money of a defendant in gaol how fixed and furnished.

276. When a defendant is committed to prison in execution of a decree, the Court shall fix whatever monthly allowance it shall think sufficient for his subsistence, not exceeding four annas per day, which shall be supplied by the party at whose instance the decree may have been executed, to the proper Officer of the Court or of the gaol where the defendant may be in custody, by monthly payments in advance, before the first day of each month; the first payment to be made for such portion of the current month as may remain unexpired before the defendant is committed to prison.

Court may vary the allowance in case of illness or for other special cause.

277. The Court may, in case of illness or for other special cause, fix the monthly allowance at such sum not exceeding six annas per day as shall appear necessary. The order fixing such allowance may from time to time be revised and altered on due cause being shown.

Release of defendant.

278. A defendant shall be released at any time on the decree being fully satisfied, or at the request of the person at whose instance he may have been imprisoned, or on such person omitting to pay the allowance as above directed. No person shall be imprisoned on account of a decree for a longer period than two years, or for a longer period than six months if the decree be for the payment of money not exceeding five hundred Rupees, or for a longer period than three months if the decree be for the payment of money not exceeding fifty Rupees.

Imprisonment not to be longer than 2 years. 6 months if decree for money not exceeding 500 Rs. 3 months if not exceeding 50 Rs.

Subsistence-money to be added to amount of decree.

279. Sums disbursed by a plaintiff for the subsistence of a defendant in gaol shall be added to the costs of the decree, and shall be recoverable by the attachment and sale of the property of the

defendant under the foregoing rules; but the defendant shall not be detained in custody or arrested on account of any sums so disbursed.

Application may be made for discharge on a surrender of the whole of the debtor's property.

280. Any person in confinement under a decree may apply to the Court for his discharge. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family and the necessary implements of his trade), and of the places respectively where such property is to be found; and such application shall be subscribed and verified by the applicant in the manner hereinbefore provided for subscribing and verifying plaints.

Procedure on such application.

281. On such application being made, the Court shall cause the plaintiff to be furnished with a copy of the account of the defendant's property, and shall fix a reasonable period within which the plaintiff may cause the whole or any part of such property to be attached and sold or may make proof that the defendant, for the purpose of procuring his discharge without satisfying the decree, has wilfully concealed property, or his right or interest therein, or fraudulently transferred or removed property, or committed any other act of bad faith. If within such period the plaintiff shall fail to make such proof, the Court shall cause the defendant to be set at liberty. If the plaintiff shall within the time specified or at any subsequent period prove to the satisfaction of the Court that the defendant has been guilty of any of the acts abovementioned, the Court shall, at the instance of the plaintiff, either retain the defendant in confinement, or commit him to prison, as the case may be, unless he shall have already been in confinement two years on account of the decree; and may also, if it shall think proper, send the defendant to the Magistrate to be dealt with according to law.

Defendant to be discharged on plaintiff failing to prove fraud or concealment by defendant.

If guilty of fraud or concealment, debtor's imprisonment may be extended to two years;

and he may be further dealt with criminally.

282. A defendant once discharged shall not again be imposed

Though the defendant be discharged, his property is liable for the decree.

on account of the same decree, except under the operation of the last preceding Section, but his property shall continue liable, under the ordinary rules, to attachment and sale until the decree shall be fully satisfied, unless the decree shall be for a sum less than one hundred Rupees and on account of a transaction bearing date subsequently to the passing of this Act. When the decree shall be for a sum less than one hundered Rupees, and on account of a transaction bearing date as above, the Court may declare a defendant who shall be discharged as aforesaid absolved from further liability under that decree.

How questions regarding amount of mesne profits and interest, and sums paid in satisfaction of decree, are to be determined.

283. All questions regarding the amount of any mesne profits which by the terms of the decree may have been reserved for adjustment in the execution of the decree, or of any mesne profits or interest which may be payable in respect of the subject matter of a suit between the date of the institution of the suit and execution of the decree, as well as questions relating to sums alleged to have been paid in discharge or satisfaction of the decree or the like, shall be determined by order of the Court executing the decree and not by separate suit; and the order passed by the Court shall be open to appeal.

OF EXECUTION OF A DECREE OUT OF THE JURISDICTION OF THE COURT BY WHICH IT WAS PASSED.

How a decree of one Court may be executed within the jurisdiction of another Court.

284. A decree of any Civil Court within any of the British territories in India or established by authority of the Governor General of India in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court whose duty it is to execute the same, may be executed within the jurisdiction of any other such Court in the manner following.

Application for such execution.

285. The plaintiff in such case may apply to the Court whose duty it is to execute the decree, to transmit a copy thereof, together with a certificate that satisfaction of such decree has not been obtained by execution within the jurisdiction of the said Court, and a copy of any order for execution of such decree that may have been

passed, to the Court by which the applicant may wish the decree to be executed.

Copy of decree and order for execution to be transmitted.

286. The Court, unless there be any sufficient reason to the contrary, shall cause such copies and certificate to be prepared: and the same, after being signed by the Judge and sealed with the seal of the Court, shall be transmitted to the Court indicated by the applicant if that Court be within the same District, otherwise to the principal Civil Court of original jurisdiction in the District in which the applicant may wish the decree to be executed; and the Court to which such copies and certificates are transmitted shall cause the same to be filed therein, without any proof of the judgment or order for execution, or of the copies thereof, or of the seal or jurisdiction of any Court, or of the signature of any judge, unless it shall, under any peculiar circumstances to be specified in an order, require such proof.

Decree or order transmitted, to be executed as that of the Court.

287. The copy of any decree, or of any order for execution, when filed in the Court to which it shall have been transmitted for the purpose of being executed as aforesaid, shall for such purpose have the same effect as a decree or order for execution made by such Court, and may, if the Court be the principal Civil Court of original jurisdiction in the District, be executed by such Court, or any Court subordinate thereto, to which it may entrust the execution of the same.

Execution how to be enforced by Court applied to.

288. When application shall be made to any Court to execute the decree of any other Court as aforesaid, the Court to which the application shall be made or referred shall proceed to execute the same according to its own rules in the like cases; provided that such Court shall have no power to inquire into the validity of the decree unless it appear upon the face of the decree that the Court by which it was made had no jurisdiction to make the same.

Wrongful acts or irregularities in executing decree to be punished by Court applied to.

289. The Court to which such application is made or referred for execution as aforesaid, shall take cognizance of and punish all wrongful acts or irregularities done or committed in executing such decree; and all persons disobeying or

obstructing the execution of such decree shall be punishable by such Court in the same manner as if the decree had been made by such Court.

Court applied to may in certain cases stay execution or order restitution of property or discharge of defendant.

290. The Court to which such application is made may, upon good and sufficient cause being shown, stay the execution of the decree for a reasonable time, to enable the defendant to apply to the Court by which the decree was passed or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or the execution thereof, which such Court of first instance or Court of Appeal might have made if execution had been issued by such Court of first instance, or if application for execution had been made to such Court; and in case the property or person of the defendant shall have been seized under an execution, the Court which issued the execution may order the restitution of the property or the discharge of the person of the defendant pending the result of such application.

Before staying execution, Court may require security from, or impose conditions upon defendant.

291. Before making an order to stay execution or for the restitution of property or the discharge of the defendant under the last preceding Section, the Court may require such security from or impose such conditions upon the defendant as it may deem reasonable.

Order of Court passing decree or of Appellate Court to be binding upon Court applied to.

292. Any order of the Court in which the decree was passed or of such Court of Appeal as aforesaid, shall be binding upon the Court to which the application for execution was made, and shall be a sufficient indemnity for all persons acting in execution of process issued by such last mentioned Court.

Liability of defendant discharged, to be re-taken.

293. No discharge of a defendant under the provisions of Section 290 shall prevent him from being re-taken in execution of the decree.

What appeal from orders for execution under this Act.

294. All orders of a Court for executing the decree of another Court shall be subject to the same rules, in respect to appeal, as if the decree had been originally passed by the Court making such order.

295. If, in execution of a decree, a warrant of arrest or other

Warrant of arrest or other process in execution of decrees, how to be enforced in Military Cantonments, &c.

process is to be enforced within the limits of a Garrison, Cantonment, Military Station, or Military Bazar, the Officer entrusted with the execution of such warrant or other process shall carry the same to the Commanding Officer, or in his absence to the Senior Officer actually present in the Garrison, Cantonment, Station, or Military Bazar; and the Commanding Officer or such Senior Officer, upon such warrant or other process being produced to him, shall back the same with his signature, and, in the case of a warrant of arrest, shall cause the person named in the warrant to be arrested if within the limits of his command and delivered, according to the exigency of the warrant, to the Civil Officer charged with the execution thereof.

Rules contained in this Chapter to be applicable to all Civil process.

296. The rules contained in this Chapter shall be applicable to the execution of any judicial process for the sale of property or for the payment of money which may be ordered by a Civil Court in any Civil proceeding.

CHAPTER V.

Of Pauper Suits.

Suits may be brought *in formâ pauperis*.

297. A suit may be brought *in formâ pauperis* in the Court having jurisdiction over the claim, subject to the following rules.

What suits excepted.

298. No pauper suit shall be brought for the recovery of any sum of money on account of damages for loss of caste, slander, abusive language, or assault.

Application to be by petition on stamp paper.

299. The application to the Court for permission to sue *in formâ pauperis* shall be by petition, which shall be written on a stamp paper of the value of eight annas.

Petition what to contain.

300. The petition shall contain the particulars required by Section 26 of this Act, in regard to plaints, and shall have annexed to it a Schedule of any movable or immovable property belonging to the petitioner, with the estimated value thereof, and shall be subscribed and verified in the manner hereinbefore prescribed for the subscription and verification of plaints.

301. The petition shall be presented to the Court by the

How to be presented.

petitioner in person; but if the petitioner satisfy the Court that he is prevented by sickness from attending the Court in person, or if the petitioner be a female, who, according to the customs and manners of the country ought not to be compelled to appear in public, the petition may be presented by a duly authorized agent who may be able to answer all material questions relating to the application and who shall be liable to be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Examination of petitioner, if a female, how to be taken.

Petition to be rejected if not in form.

302. If the petition be not framed or presented in the manner laid down in the last two preceding Sections, the Court shall reject the petition.

If in form, Court how to proceed.

If presented by an agent, Court may order petitioner to be examined in like manner as an absent witness.

303. If the petition be in form and duly presented, the Court shall proceed to examine the petitioner, or the agent of the petitioner as the case may be regarding the merits of the claim and the property of the petitioner. When the petition is presented by an agent, the Court may also if it think proper, order that the petitioner be examined in the manner hereinbefore prescribed for the examination of absent witnesses.

Court may reject the application.

304. If it appear to the Court upon such examination that the defendant, or the matter of the suit, is not within the jurisdiction of the Court, or that the claim is barred by the Statute of Limitations, or that the allegations of the petitioner do not constitute a reasonable ground of action, or (if none of the objections above stated exist) that the petitioner has failed to show that he is not possessed of sufficient means to enable him to pay for the stamps required for the institution and prosecution of the suit, or that the petitioner has recently disposed of any property fraudulently or with a view to obtain the benefit of this Chapter, the Court shall refuse to allow the petitioner to sue as a pauper.

Notice to opposite party.

305. If upon such examination the Court shall see no reason to refuse the application on any of the grounds stated in the last preceding Section, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party) for receiving such evidence as the

petitioner may adduce in proof of his pauperism, and for hearing any evidence which the opposite party may bring forward in disproof of the pauperism of the petitioner.

After a summary enquiry, the Court to pass a final order.

306. On the day appointed for the hearing, or as soon after as the business of the Court will permit, the Court shall consider any objections made by the opposite party, and shall examine any witnesses produced by either party and make a memorandum of the substance of their evidence, and shall either allow or refuse to allow the petitioner to sue as a pauper.

Court may direct a local enquiry.

307. Previously to passing a final order in the case, the Court may, if it deem fit, institute a local enquiry, in the manner laid down in Section 180 of this Act, regarding the property of the petitioner or regarding the amount or value of any property claimed.

Course of proceeding to be observed, if application be admitted.

308. If the application of the petitioner be granted and numbered, it shall be registered and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as an ordinary suit, except that the plaintiff shall not be liable to any further stamp duty in respect of any petition, appointment of a pleader, or other proceeding connected with the suit or with the execution of any decree passed in it.

On the decision of the suit, costs how to be calculated.

309. On the decision of the suit, the Court shall calculate the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, and such amount shall be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable.

Refusal to allow to sue as a pauper, to bar any subsequent application of the like nature.

310. The refusal to allow the petitioner to sue as a pauper shall be a bar to any subsequent application of the like nature in respect of the same cause of action; but the plaintiff shall be at liberty to institute a suit in the usual manner in respect of such cause of action, unless precluded by the rules for the limitation of suits.

No appeals from orders under this Chapter.

311. The orders passed by the Court under the provisions of this Chapter shall not be subject to appeal.

CHAPTER VI.

Reference to Arbitration.*

Reference to arbitration on application of the parties.

312. If the parties to a suit are desirous that the matters in difference between them in the suit, or any of such matters, shall be referred to the final decision of one or more arbitrator or arbitrators, they may apply to the Court at any time before final judgment for an order of reference.

Application how to be made.

313. The application shall be made by the parties in person or by their pleaders specially authorized in that behalf by an instrument in writing, which shall be presented to the Court at the time of making the application, and shall be filed with the proceedings in the suit.

Nomination and appointment of arbitrators.

314. The arbitrator or arbitrators shall be nominated by the parties in such manner as may be agreed upon between them. If the parties cannot agree with respect to the nomination of the arbitrator or arbitrators, or if the person or persons nominated by them shall refuse to accept the arbitration, and the parties are desirous that the nomination shall be made by the Court, the Court shall appoint the arbitrator or arbitrators.

Order of reference.

315. The Court shall, by an order under its seal, refer to the arbitrator or arbitrators the matters in difference in the suit which he or they may be required to determine, and shall fix such time as it may think reasonable for the delivery of the award, and the time so fixed shall be specified in the order.

When the reference is to two or more, the order shall provide for difference of opinion.

316. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint an umpire, or otherwise as may be agreed upon between the parties; or if they cannot agree, as the Court may determine.

Powers of arbitrators.

317. When a reference is made to arbitration by an order of Court, the Court shall issue the same processes to the parties and witnesses whom the arbitrator or arbitrators or umpire may desire to have examined, as the

Court is authorized to issue in suits tried before it; and persons not attending in consequence of such process, or making any other default, or refusing to give their testimony, or being guilty of any contempt to the arbitrator or arbitrators or umpire during the investigation of the suit, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the representation of the arbitrator or arbitrators or umpire, as they would incur for the same offences in suits tried before the Court.

Extension of time for making award.

318. When the arbitrator or arbitrators shall not have been able to complete the award within the period specified in the order from the want of the necessary evidence or information or other good and sufficient cause, the Court may from time to time enlarge the period for the delivery of the award, if it shall think proper. In any case in which an umpire shall have been appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time or their extended time to expire without making an award, or shall have delivered to the Court or to the umpire a notice in writing stating, that they cannot agree. Provided that an award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from corruption or misconduct of the arbitrator or arbitrators or umpire, or unless the award shall have been made after the issue of an order by the Court superseding the arbitration and recalling the suit.

In case of death, incapacity, or refusal to act of arbitrators or umpire, Court may appoint others in stead.

319. If, in any case of reference to arbitration by an order of Court, the arbitrator or arbitrators or umpire shall die, or refuse or become incapable to act, it shall be lawful for the Court to appoint a new arbitrator or arbitrators or umpire, in the place of the person or persons so dying, or refusing or becoming incapable to act. Where the arbitrators are empowered by the terms of the order of reference to appoint an umpire and do not appoint an umpire, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven days after such notice shall have been served, no umpire be appointed, it shall be lawful for the Court, upon the application of the party having served such notice as aforesaid, and upon

proof to its satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this Section, the arbitrator or arbitrators, or umpire so appointed, shall have the like power to act in the reference, as if their name or names had been inserted in the original order of reference.

320. When an award in a suit shall be made either by the arbitrator or arbitrators, or by the umpire, it shall be submitted to the Court under the signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and exhibits in the suit.

Award how to be submitted to Court.

321. It shall be lawful for the arbitrator or arbitrators or umpire, upon any reference, by an order of Court if he or they shall think fit, and if it is not provided to the contrary, to state his or their award as to the whole or any part thereof in the form of a special case for the opinion of the Court.

Arbitrator may state special case.

322. The Court may on the application of either party modify or correct an award where it appears that a part of the award is upon matters not referred to the arbitrators, provided such part can be separated from the other part and does not affect the decision on the matter referred; or where the award is imperfect in form or contains any obvious error which can be amended without affecting such decision. The Court may also on such application make such order as it thinks just respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

Court may, on application, modify or correct an award in certain cases.

And make order respecting the costs of arbitration.

323. In any of the following cases the Court shall have power to remit the award or any of the matters referred to arbitration to the re-consideration of the same arbitrator or arbitrators or umpire, upon such terms as it may think proper (that is to say)—

In what cases Court may remit the award or any of the matters referred to arbitration, for reconsideration.

If the award has left undetermined some of the matters referred to arbitration, or if it determine matters not referred to arbitration.

If the award is so indefinite as to be incapable of execution.

If an objection to the legality of the award is apparent upon the face of the award.

324. No award shall be liable to be set aside except on the ground of corruption or misconduct of the arbitrators or umpire. Any application to set aside an award shall be made within ten days after the same has been submitted to the Court.

Award not to be set aside except on ground of corruption.

Application to set aside the award.

325. If the Court shall not see cause to remit the award or any of the matters referred to arbitration for re-consideration in manner aforesaid, and if no application shall have been made to set aside the award, or if the Court shall have refused such application, the Court shall proceed to pass judgment according to the award or according to its own opinion on the special case if the award shall have been submitted to in the form of a special case; and upon the judgment which shall be so given decree shall follow and be carried into execution in the same manner as other decrees of the Court. In every case in which judgment shall be given according to the award, the judgment shall be final.

Judgment to be according to the award.

326. When any persons shall by an instrument in writing agree that any differences between them or any of them shall be referred to the arbitration of any person or persons named in the agreement or to be appointed by any Court having jurisdiction in the matter to which it relates, application may be made by the parties thereto or any of them that the agreement be filed in such Court. On such application being made, the Court shall direct such notice to be given to any of the parties to the agreement, other than the applicants, as it may think necessary, requiring such parties to show cause, within a time to be specified, why the agreement should not be filed. The application shall be written on a stamp paper of one-fourth of the value prescribed for plaints in suits, and shall be numbered and registered as a suit between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants. If no sufficient cause be shown against the agreement, the agreement shall be filed and an order of reference to arbi-

Agreement of parties to refer to arbitration may be filed in the Court.

tration shall be made thereon. The several provisions of this Chapter, so far as they are not inconsistent with the terms of any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court and to the award of arbitration and to the enforcement of such award.

Provisions of this Chapter applicable.

327. When any matter has been referred to arbitration without the intervention of any Court of Justice, and an award has been made, any person interested in the award may within six months from the date of the award make application to the Court having jurisdiction in the matter to which the award relates, that the award be filed in Court. The Court shall direct notice to be given to the parties to the arbitration other than the applicant, requiring such parties to show cause, within a time to be specified, why the award should not be filed. The application shall be written on the stamp paper required for petitions to the Court where a stamp is required for petitions by any law for the time being in force, and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants. If no sufficient cause be shown against the award, the award shall be filed and may be enforced as an award made under the provisions of this Chapter.

Filing in Court an award when the matter was referred to arbitration without intervention of Court.

Enforcement of such award.

CHAPTER VII.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

HOW QUESTIONS MAY BE RAISED FOR THE DECISION OF A CIVIL COURT BY ANY PERSONS INTERESTED.

328. Parties interested or claiming to be interested in the decision of any question of fact or law, may enter into an agreement, which shall be subject to same stamp duty as prescribed for plaints in suits, that upon the finding of a Court in the affirmative or negative of such question of fact or law, a sum of money fixed by the parties, or to be determined by the Court, shall be paid by one of the parties to the other of them; or that some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the

Questions of fact, or of law or equity, may be raised by agreement for the decision of any Court having jurisdiction.

other of them; or that one or more of the parties shall do or perform some particular legal act or shall refrain from doing or performing some particular act specified in the agreement. Where the agreement is for the delivery of some property movable or immovable, or for the doing or performing, or the refraining to do or perform any particular act, the estimated value of the property to be delivered, or to which the act specified may have reference, shall be stated in the agreement.

Agreement to be filed and numbered as a suit.

329. The agreement may be filed in any Court having jurisdiction in the matter, and, when so filed, shall be numbered and registered as a suit between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

Parties to be subject to the Court's jurisdiction.

330. After the agreement shall have been filed, all the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

Hearing and disposal of the case.

331. The case shall be set down for hearing as an ordinary suit; and if the Court shall be satisfied, after an examination of the parties or their pleaders, or taking such evidence as it may deem proper, that the agreement was duly executed by the parties, and that they have a *bonâ fide* interest in the question of fact or law stated therein and that the same is fit to be tried or decided, it shall proceed to record and try, or hear the same, and deliver its finding or opinion thereon, in the same way as in an ordinary suit; and shall, upon its finding or deciding upon the question of fact or law, give judgment for the sum fixed by the parties, or so ascertained as aforesaid, or otherwise, according to the terms of the agreement, and upon the judgment which shall be so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER VIII.

OF APPEALS.

332. Except when otherwise expressly provided in this or

Appeal to lie from all decrees except when expressly prohibited.

any other Regulation or Act for the time being in force, an appeal shall lie from the decrees of the Courts of original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts. If the appeal lie to the Sudder Court it shall be heard and determined by a Court consisting of three or more Judges of that Court.

Appeal to Sudder Court to be heard by three or more Judges.

HOW APPEALS ARE TO BE PREFERRED.

Appeals to be preferred by a memorandum to be presented to the Appellate Court within specified time.

333. Appeals shall be made in the form of a memorandum which shall be presented in the Appellate Court within the period hereinafter specified, unless the appellant shall show sufficient cause to the satisfaction of the Appellate Court for not having presented it within such limited period; that is to say, within thirty days if the appeal be to a District Court, and within ninety days if the appeal be to the Sudder Court. The days shall be reckoned from and exclusive of the day on which judgment was pronounced, and also exclusive of such time as may be requisite for obtaining a copy of the decree appealed against.

What the memorandum is to contain.

334. The memorandum of appeal shall set forth concisely, and under distinct heads, the grounds of objection to the decision appealed against, without any argument or narrative, and such grounds shall be numbered consecutively. The appellant shall not without the leave of the Court urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant.

Form of memorandum.

335. The memorandum of appeal shall be in the following form, or to the following effect, and shall be accompanied by a copy of the decree appealed against—

Memorandum of Appeal.

(Name, &c. as in Register.) Plaintiff.

(Name, &c. as in Register.) Defendant.

[Name of Appellant] Plaintiff [or Defendant] above-named appeals to the Suder Court at [or Zillah Court at as the case may be], against the decree of

in the above suit, dated the day of for the following reasons, namely, [*here state the reasons.*]

336. If the memorandum be not drawn up in the manner hereinbefore prescribed, the Court may reject it or may return it to the party for the purpose of being corrected. If the memorandum be not presented within the prescribed period and no sufficient cause be shown for the delay, the appeal shall be rejected.

If memorandum be not in form or duly presented.

337. If there be two or more plaintiffs or two or more defendants in a suit, and the decision of the Lower Court proceed on any ground common to all, any one of the plaintiffs or defendants may appeal against the whole decree, and the Appellate Court may reverse or modify the decree in favor of all the plaintiffs or defendants.

One of several plaintiffs or defendants may appeal and obtain a reversal of the whole decree if it proceed on a ground common to all.

Of staying and executing Decrees under Appeal.

338. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against such decree; but the Appellate Court may for sufficient cause shown, order that execution be stayed. If application for execution be made before the time allowed for appeal has expired, and the Lower Court has not received intimation of an appeal having been preferred, the Lower Court, if sufficient cause be shown, may stay the execution. Before making an order to stay execution, the Court making the order shall require security to be given by the party against whom the decree was passed for the due performance of the decree or order of the Appellate Court.

Execution of decree not to be stayed by appeal; but if sufficient cause be shown, execution may be stayed.

Court, before making order to stay execution, shall require security for due performance of decree or order of Appellate Court.

339. When an order is made for the execution of a decree against which an appeal has been preferred, it shall be lawful for the Court which pronounced the decree to require security to be given for the restitution of any property which may be taken in execution of the decree or of the value thereof, and for the due performance of the decree or order of the Appellate Court.

Court making an order for execution of a decree against which an appeal has been preferred, may require security for restitution of property, &c.

340. In suits instituted or defended under the authority and at the expense of Government, no such security as is mentioned in the last two preceding Sections shall in any case be required from Government or from any public Officer.

No such security to be required from Government or any Public Officer.

Of Procedure in Appeals from Decrees.

341. When a memorandum of appeal is presented in the prescribed form and within the time allowed, the Appellate Court, or the proper Officer of that Court, shall endorse thereon the date of presentment, and shall register the appeal in a book to be kept for the purpose, and called the Register of Appeals. Such Register shall be in the form contained in the Schedule (C) hereunto annexed.

How the appeal is to be entered.

Form of the Register.

342. It shall be in the discretion of the Appellate Court to demand security for costs from the appellant or not, as it shall see fit, before the respondent is called upon to appear and answer. Provided that the Court shall demand such security in all cases in which the appellant is residing out of the British Territories in India and is not possessed of any land or other immovable property within those territories independent of the property to which the appeal relates; and in the event of such security not being furnished at the time of presenting the memorandum of appeal or within such time as the Court shall order, the Court shall reject the appeal.

Appellate Court may, at its discretion, require security for costs from Appellant.

343. When the memorandum of appeal has been registered, the Appellate Court shall send intimation thereof to the Lower Court. If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Lower Court shall, upon the receipt of the intimation, transmit to the Appellate Court with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court. Either party may give notice in writing to the Lower Court specifying any exhibits of which he requires copies to be made and deposited in the Lower Court, and copies of such exhibits shall be prepar-

Appellate Court to send intimation to Lower Court of appeal being registered.

Lower Court to transmit papers to Appellate Court.

Either party may give notice of exhibits of which he requires to be made and deposited in the Lower Court.

ed at the expense of the party giving the notice and shall be deposited in the Lower Court.

344. A day shall be fixed by the Appellate Court for the hearing of the appeal. The day shall be so fixed, with reference to the place of residence of the respondent and the time necessary for the service of the notice of appeal, as to allow the respondent a sufficient time to enable him to appear in person or by a pleader on such day.

Day for hearing the appeal, how to be fixed.

345. Notice of the day which has been fixed for hearing the appeal shall be affixed in the Appellate Court, and a like notice shall be sent by the Appellate Court to the Lower Court and shall be served on the respondent in the same way as hereinbefore provided for the service of a summons to a defendant to appear and answer, and all rules applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice. The notice to the respondent shall contain an intimation that, if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, the case will be heard and decided *ex parte* in his absence. Provided that, if the respondent has appointed a pleader to appear in his behalf in the Appellate Court, the service of the notice on such pleader shall be sufficient.

Publication and service of notice of the day fixed for hearing the appeal.

Form of notice.

346. If on the day fixed for hearing the appeal or any other day subsequent thereto which the hearing of the appeal may be adjourned, the appellant shall not appear in person or by a pleader, the appeal shall be dismissed for default. If the appellant shall appear in person or by a pleader, and the respondent shall not appear in person or by a pleader, the appeal shall be heard *ex parte* in his absence.

Consequence of non-appearance.

347. If an appeal be dismissed for default of prosecution, the appellant may, within thirty days from the date of the dismissal, apply to the Appellate Court for the re-admission of the appeal; and if it shall be proved to the satisfaction of the Court that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Court may re-admit the appeal.

Re-admission of appeal dismissed for default of prosecution.

Respondent may object to decision of Lower Court in the same manner as if he had preferred a separate appeal.

348. Upon the hearing of the appeal, the respondent may take any objection to the decision of the Lower Court which he might have taken if he had preferred a separate appeal from such decision.

The Appellate Court how to give Judgment.

349. The Appellate Court, after hearing the appeal, shall proceed to give its judgment in the manner hereinbefore prescribed for giving judgment in Courts of original jurisdiction.

No decision to be reversed for irregularity.

350. The judgment may be for confirming or reversing or modifying the decree of the Lower Court. But no decree shall be reversed or modified nor shall any case be remanded to the Lower Court on account of any error, defect, or irregularity either in the decision or in any interlocutory order passed in the suit not affecting the merits of the case or the jurisdiction of the Court.

When a case may be remanded by Appellate Court.

351. If the Lower Court shall have disposed of the case upon any preliminary point so as to exclude any evidence of fact which shall appear to the Appellate Court essential to the rights of the parties, and the decree of the Lower Court upon such preliminary point shall be reversed by the decree in appeal, the Appellate Court may, if it think right, remand the case, together with a copy of the decree in appeal, to the Lower Court, with directions to restore the suit to its original number in the Register and proceed to investigate the merits of the case, and pass a decree therein.

Power to remand limited as above.

352. It shall not be competent to the Appellate Court to remand a case for a second decision by the Lower Court, except as provided in the last preceding Section.

When the evidence is sufficient, the Appellate Court must determine the case though the Lower Court has decided on other grounds.

353. When the evidence upon the record of the Lower Court is sufficient to enable the Appellate Court to pronounce a satisfactory judgment, the Appellate Court shall finally determine the case, notwithstanding that the judgment of the Lower Court has proceeding wholly upon some other ground.

354. If the Lower Court shall have omitted to raise or try any issue or to determine any question of fact which shall appear to the Appellate Court essential to the right determination of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question of fact, the Appellate Court may frame an issue or issues for trial by the Lower Court and may refer the same to the Lower Court for trial. Thereupon the Lower Court shall proceed to try such issue or issues and shall return to the Appellate Court its finding thereon together with the evidence. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, file a memorandum of any objection to the finding; and after the expiration of the period so fixed, the Appellate Court shall proceed to determine the appeal.

Trial of issues by Lower Court on reference from Appellate Court.

355. It shall not be competent to the parties in an appeal to produce additional evidence in the Appellate Court, whether of exhibits or witnesses; but if it appear that the Lower Court refused to admit competent evidence, or if the Appellate Court require any exhibits to be produced or witnesses examined to enable it to pronounce a satisfactory judgment, or for any other substantial cause, the Appellate Court may allow additional exhibits to be received and any necessary witnesses to be examined, whether such witnesses shall have been previously examined in the Court below or not; provided that, whenever additional evidence is admitted by an Appellate Court, the reasons for the admission shall be recorded on the proceedings of such Court.

When the Appellate Court may call for fresh evidence.

356. Whenever additional evidence is permitted to be received, it shall be competent to the Appellate Court to take such evidence before itself, or to require the Lower or any other Court or to empower any person to take such evidence, and to transmit the evidence so taken to the Appellate Court. It shall also be competent to the Appellate Court to prescribe the manner in which such evidence shall be taken.

How additional evidence is to be taken.

357. In all cases where additional evidence is permitted to

Points to be defined.

be taken, the Appellate Court shall define the point or points to which the evidence is to be confined, and record the same on its proceedings.

358. The Appellate Court shall have all the like powers in regard to the granting of time, adjourning the hearing of the suit, examining the parties or their pleaders, and awarding costs, or otherwise, as are hereinbefore contained in regard to Courts of original jurisdiction.

Powers of Appellate Court

359. The judgment of the Appellate Court shall be pronounced in open Court. It shall contain the point or points for determination, the decision thereupon, and the reasons for the decision, and shall be dated and signed by the Judge or by the Judges concurring therein at the time of pronouncing it. The judgment shall be written in the English language; but if the Judge shall not be able to write an intelligible judgment in that language, the judgment shall be written in the vernacular language of the Judge. When the language in which the judgment is written is not the language in ordinary use in proceedings before the Court, the judgment shall be translated into such language, and the translation shall be signed by the Judge or Judges. Any Judge dissenting from the judgment of the Court shall state his opinion in writing, which shall form part of the record.

Judgment of the Appellate Court. In what language it is to be written.

Dissent to be recorded.

360. The decree of the Appellate Court shall bear date the day on which the judgment was passed. It shall contain the number of the suit, the names and description of the parties appellant and respondent, and the memorandum of appeal, and shall specify clearly the relief granted or other determination of the appeal. It shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the original suit are to be paid. The decree shall be signed by the Judge or Judges who passed it and shall be sealed with the seal of the Court. If there be a difference of opinion among the Judges of the Court, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree, but the opinion of such Judge shall be recited in the decree. Certified copies of the decree shall be furnished to the parties in the same manner

What the decree is to contain.

as hereinbefore provided in regard to the decrees of Courts of original jurisdiction.

A certified copy of the decree to be transmitted to the Lower Court.

361. A copy of the decree or other order disposing of the appeal, certified by the Appellate Court or the proper Officer of such Court, and sealed with the seal of the Court, shall be transmitted to the Court which passed the first decree in the suit appealed from, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the original Register of the suit.

How to be executed.

362. Application for execution of the decree of an Appellate Court shall be made to the Court which passed the first decree in the suit, and shall be executed by that Court, in the manner and according to the rules hereinbefore contained for the execution of original decrees.

APPEALS FROM ORDERS.

No appeal from order passed before decree, but error or defect therein may be set forth as an objection if the decree be appealed against.

363. No appeal shall lie from any order passed in the course of a suit and relating thereto prior to decree; but if the decree be appealed against, any error, defect, or irregularity in any such order affecting the merits of the case or the jurisdiction of the Court, may be set forth as a ground of objection in the memorandum of appeal.

No appeal from order passed after decree and relating to the execution thereof except as provided.

364. No appeal shall lie from any order passed after decree and relating to the execution thereof except as is hereinbefore expressly provided.

Appeal from orders as to fines or imprisonment.

365. All orders as to fines or the levying thereof or as to imprisonment under this Act (except when the imprisonment is in execution of a decree) shall be subject to appeal.

Procedure in appeals from orders.

366. When an appeal from any order is allowed, the period for preferring the appeal and the procedure thereon shall be in all respects the same as in an appeal from a decree.

CHAPTER IX.

OF APPEALS IN FORMA PAUPERIS.

Who may appeal as pauper.

367. Any party to a suit who may be unable to pay for the stamps required for the prosecution of an appeal from the decision passed therein, may be allowed to appeal as a pauper from such decision subject to all the rules contained in the last preceding Chapter and in Chapter V. in so far as they are applicable.

Application to whom and when to be presented.

368. The application to be allowed to appeal *in formâ pauperis* shall be written on a stamp paper of the value of one Rupee if the appeal lie to the District Court, and on a stamp paper of the value of two Rupees if the appeal lie to the Sudder Court, and shall be presented in the Appellate Court within the period allowed for the presentation of a memorandum of appeal.

Form of application.

369. The Application shall contain the particulars required to be set forth in the memorandum of appeal and shall be drawn up in the like manner. It shall have annexed to it a Schedule of any movable or immovable property belonging to the applicant with the estimated value thereof, and shall also be accompanied by copies of the judgment and decree from which the appeal is made.

Procedure.

370. If the Appellate Court, upon a perusal of the application and of the judgment and decree of the Court below, shall see no reason to think that the decision of that Court is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust, it shall reject the application. If the application be not rejected upon any of the grounds abovementioned, enquiry shall be made into the alleged pauperism of the applicant, and such enquiry may be conducted either by the Appellate Court or by the Court from whose decision the appeal is made under the orders of the Appellate Court. Provided that, if the applicant was allowed to sue *in formâ pauperis* in the Court below, no further enquiry in respect of his pauperism shall be necessary, unless the Appellate Court shall see special cause to direct such enquiry.

Effect of order by Appellate Court.

371. The order passed by the Appellate Court on an application to be allowed to appeal *in formâ pauperis*, whether for the admission or rejection

of the application, shall be final; but, if the application be rejected, the Appellate Court may, if it think proper, allow the applicant a reasonable time for preferring an appeal on a stamp of the value prescribed for appeals from decrees.

CHAPTER X.

OF SPECIAL APPEALS.

Special appeals allowed on what grounds.

372. Unless otherwise provided by any law for the time being in force, a special appeal shall lie to the Sudder Court from all decisions passed in regular appeal by the Courts subordinate to the Sudder Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in law in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground.

Application to be presented to the Sudder Court.

373. The application for the admission of a special appeal shall be presented in the Sudder Court within the period prescribed for the presentation of a memorandum of appeal, and shall be accompanied by copies of the judgments and decrees of the Lower Appellate Court and of the Court of first instance. The application shall be written on a stamp paper of the value prescribed for regular appeals; but if the applicant be unable to pay for the stamps required for the prosecution of the appeal, the Sudder Court may admit him to appeal as a pauper, subject to all the rules contained in Chapter IX. in respect to appeals from decrees *in formâ pauperis* in so far as the same may be applicable.

Form of application.

374. The application shall set forth concisely the grounds of objection to the decision appealed against without argument or narrative, and such grounds shall be numbered consecutively. The applicant shall not, without the leave of the Court, be heard in support of any other ground of objection; but the determination of the Court may be upon any ground on which a special appeal would lie.

Application how to be dealt with.

375. If the application be not drawn up in the manner hereinbefore prescribed, the Court may reject it or may return it to the party for the purpose of being corrected. When the application is correctly drawn up,

it shall be registered in a book to be kept for that purpose, which shall be in the form contained in the Schedule D. hereunto annexed and the case shall proceed in all other respects as a regular appeal, and shall be subject to all the rules hereinbefore provided for such appeals so far as the same may be applicable.

CHAPTER XI.

Review of Judgment.

Review of judgment.

376. Any person considering himself aggrieved by a decree of a Court of original jurisdiction, from which no appeal shall have been preferred to a Superior Court—or by a decree of a District Court in appeal, from which no special appeal shall have been admitted by the Sudder Court—or by a decree of the Sudder Court from which either no appeal may have been preferred to Her Majesty in Council, or an appeal having been preferred, no proceedings in the suit have been transmitted to Her Majesty in Council—and who from the discovery of new matter or evidence which was not within his knowledge, or could not be adduced by him at the time when such decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against him—may apply for a review of judgment by the Court which passed the decree.

On discovery of new evidence, &c.

Within what time and on what paper the application should be made.

377. The application shall be made within ninety days from the date of the decree unless the party preferring the same shall be able to show just and reasonable cause, to the satisfaction of the Court, for not having preferred such application within the limited period. If the application be made within the period above-mentioned, it shall be written on the stamp paper prescribed for petitions to the Court where a stamp is required; but if made after the expiration of that period, it shall be written on the stamp paper prescribed for plaints.

The order of the Court for granting or refusing the review is final.

378. If the Court shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application, but if it shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Court shall grant the review, and its

order in either case, whether for rejecting the application or granting the review, shall be final. Provided that no review of judgment shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree of which a review is solicited.

Proviso.

379. If the Court to which the application for a review of its judgment has been presented by a Court consisting two or more Judges, whenever the Judge or Judges who may have passed the decree, or if the decree have been passed by two or more Judges, when any of such Judges shall continue attached to the Court at the time when the application for a review is presented, and shall not be precluded by absence or other cause, for a period of six months after the application, from considering the Judgment to which the application refers, it shall not be competent to any other Judge or Judges of the same Court to enter upon a consideration of the merits of the application, and record an order or opinion thereon.

Application for a review in the Sudder Court must be made to the Judge or Judges that passed the decree.

380. When an application for a review of judgment is granted, a note thereof shall be made in the Register of Suits or appeals (as the case may be), and the Court shall give such order in regard to the re-hearing of the suit as it may deem proper in the circumstances of the case.

Procedure on application for a review being granted.

CHAPTER XII.

Miscellaneous.

381. The Sudder Court shall have power to make and issue general rules for regulating the practice and proceedings of the Subordinate Civil Courts, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and for keeping all books, entries, and accounts to be kept by the Officers, and from time to time to alter any such rule or form; provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law in force.

Sudder Court empowered to make rules of practice, &c., for the Subordinate Civil Courts.

Provided such rules are not inconsistent with this or any other law.

Act not to extend, except in certain cases, to Supreme and Presidency Small Cause Courts.

382. Except so far as relates to the examination of witnesses under Commission and to the execution of decrees out of the jurisdiction of the Courts by which they were passed, this Act shall not extend to any suit instituted in any Court of Judicature established by Royal Charter or in any Court for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay.

Saving of jurisdiction and procedure of Village Moonsiffs and Village or District Punchayets in Madras—

of Military Courts of Request—

of single Officers appointed to try small suits in Madras and Bombay.

And of Military Punchayets in Madras.

383. Nothing in this Act shall be held to alter or affect the jurisdiction or procedure in Civil cases of Village Moonsiffs or Village or District Punchayets under the provisions of the Madras Code; or the jurisdiction or procedure of Military Courts of Request; or the jurisdiction or procedure of a single Officer duly authorized and appointed under the rules in force in the Presidencies of Fort St. George and Bombay respectively, for the trial of small suits in Military bazars at Cantonments and Stations occupied by the Troops of those Presidencies respectively; or by Punchayets in regard to suits against Military persons, according to the rules in force under the Presidency of Fort St. George.

Saving of certain special or local Laws.

384. Nothing in this Act shall be held to affect the jurisdiction exercised by certain Jagheerdars and other authorities invested with powers under the provisions of Regulation XIII. 1830 of the Bombay Code *(for vesting certain Jagheerdars, Surinjameedars, and Inamdars with the power of deciding suits within the boundaries of their respective estates)* and Act XV. of 1840 *(for extending Regulations XV. 1827 and XIII. 1830 of the Bombay Code to the Agents of Foreign Sovereigns)*, or their procedure in the exercise of such jurisdiction; or to affect suits instituted under Regulation XI. 1816 of the Bengal Code *(for receiving, trying, and deciding claims to the right of inheritance or succession in certain Tributary estates in Zillah Cuttack)*, or cases of the nature defined in Regulation XXIX. 1827 *(for bringing under the operation of the Regulations the Bombay Territories in the Dekkan and Khandesh)*, Regulation VII. 1830 *(for bringing under the operation of the Regulations the Territories comprised in the*

Southern Mahratta Country), Regulations I. and XVI. 1831 of the Bombay Code *(for extending the jurisdiction of the Agent of Government in the Dekkan and Khandesh and of the Political Agent in the Southern Mahratta Country over suits in which certain privileged persons are concerned)*, Act XIX. of 1835 *(relating to the jurisdiction and authority of the Assistant to the Agent for Sirdars in the Dekkan)*, and Act XIII. of 1842 *(to enable the holders of revenue which has been alienated to them by the state to collect that revenue within the Presidency of Bombay)*, except that such suits and cases and the regular and special appeals to the Civil Courts allowed therein, shall be received, heard, and determined under the rules laid down in this Act, unless where those rules are inconsistent with any specific provisions contained in the Regulations and Acts above quoted.

Act not to take effect in places not subject to the general Regulations until extended thereto.

385. This Act shall not take effect in any part of the territories not subject to the general Regulations of Bengal, Madras, and Bombay, until the same shall be extended thereto by the Governor General of India in Council or by the Local Government to which such territory is subordinate, and notified in the *Gazette.*

Interpretation.

386. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say):—

Number.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Gender.

Words importing the masculine gender shall include females.

"District."

"District Court."

The local jurisdiction of a Principal Civil Court of original jurisdiction shall be deemed a District for the purposes of this Act; and the words "District Court" shall mean such Court.

"Sudder Court."

In any part of the British territories in India to which this Act may be extended under the provisions of Section 385, the expression "Sudder Court" shall be deemed to include the highest Civil Court of Appeal in such part of the said territories.

387. This Act shall come into operation in the Presidency of

Commencement of operation of Act.

Bengal from the 1st day of July 1859 and in the Presidencies of Madras and Bombay from the 1st day of January 1860 or from such earlier day as the Local Government in those Presidencies respectively shall fix and shall publicly notify in the Gazette of the Presidency three months at least before the date so fixed. But if in any

Pending suits.

suit pending at the time when this Act shall come into operation it shall appear to the Court that the application of any provision of this Act would deprive any party to the suit of any right in reference to the procedure of the suit, whether of appeal or otherwise, which but for the passing of this Act would have belonged to him, the Court shall proceed according to the law in force before this Act takes effect.

Where Act comes into operation, procedure of Civil Courts to be regulated by it only.

388. From and after the time when this Act shall come into operation in any part of the British territories in India, the procedure of the Civil Courts in such part of the said territories shall be regulated by this Act, and except as otherwise provided by this Act, by no other Law or Regulation.

SCHEDULE A. referred to in the foregoing scheme of Procedure.

COURT of the of holden at
REGISTER OF CIVIL SUITS in the year 18

Date of presentation of plaint.	No. of Suit.	PLAINTIFF.			DEFENDANT.			CLAIM.			APPEARANCE.			JUDGMENT.			APPEAL.		EXECUTION.					RETURN OF EXECUTION.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Particulars.	Amount or value.	When the Cause of Action accrued.	Day for Parties to appear.	Plaintiff.	Defendant.	Date.	For whom.	For what, or Amount.	Date of appeal	Judgment in appeal.	Date of application.	Date of Order.	Against whom.	For what, and Amount if Money.	Amount of Costs.	Amount paid into Court.	Arrested.	Minute of other Return than Payment or Arrest, and Date of every Return.

SCHEDULE B.
No. of Suit.

In the Court of at

Plaintiff.
Defendant.

(Name, description, and address.)

Whereas [*here enter the name, description, and address of the Plaintiff*] has instituted a suit in this Court against you [***here state the particulars** of the claim as in the Register*]: you are hereby summoned to appear in this Court in person on the day of at in the forenoon [*if not specially required to appear in person, state—" in person or by a pleader of the Court duly **instructed and able to answer** all material questions relating to the suit, or who shall be accompanied by some other person able to answer all **such questions**"*] to answer the above-named plaintiff. [*If the summons be for the final disposal of the suit, this further direction shall be added here; " **and as the day fixed** for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses **on that day**"*]; and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the suit wil be heard and determined in your absence; and you will bring with you (or send by your agent) [*here mention any document the production **of which may** be required by the plaintiff*] which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

SCHEDULE C. to the foregoing scheme of Procedure.

COURT at

REGISTER OF APPEALS from DECREES in the year 18

Date of Memorandum.	No. of Appeal.	APPELLANT.			RESPONDENT.			DECREE APPEALED FROM.				APPEARANCE.			JUDGMENT.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode	Of what Court.	No. of Original Suit.	Particulars.	Amount or Value	Day for Parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed, or altered.	For what, or Amount.

SCHEDULE D. to the foregoing scheme of Procedure.

SUDDER COURT at

REGISTER OF SPECIAL APPEALS.

Date of Memorandum.	No. of Appeal.	APPELLANT.			RESPONDENT.			DECREE APPEALED FROM.				APPEARANCE.			JUDGMENT.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what Court.	No. of Original Suit and of Appeal.	Particulars.	Amount or Value.	Day for Parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed, or altered.	For what, or Amount.

FORFEITED PROPERTY.

ACT No. IX. OF 1859.

[*Passed on the 30th April*, 1859.

1, 2. Empowers the Government to appoint Court of Special Commissioners for trial of claims to property seized as forfeited &c. (2) Court, to consist of not less than 3 Commissioners.

3, 4. Establishment of such Court to be notified to the public, and all other Courts to be thereupon suspended; and (4) all matters cognizable under this Act to be transferred from old Court to Commissioner's.

5. Government to appoint places where Court shall sit.

6, 7, 8. Prescribes the form of the plaint; and (7) its mode of verification; and (8) its mode of presentation.

9, 10. Prescribes procedure before hearing; and (10) on hearing.

11. Prescribes mode of taking the examination of witnesses.

12. Extends to proceedings under this Act the law respecting delivery of the decision.

13. Denies all right of appeal.

14, 15. Directs that decrees of Courts under this Act shall be executed by ordinary Civil Courts, &c.; in which (15) records of former are to be deposited.

16, 17. Conviction of offender to be conclusive as to forfeiture of property; and (17) validity of conviction not to be questioned for apparent want of Jurisdiction to convict.

18. Attachment and seizure of property without conviction to bind the forfeiture of the property, unless supposed offender shall surrender within a year and be acquitted.

19. Limits power of Judge &c. acting under Acts XIV. and XVI. 1857.

20. Act not to affect the right of parties not charged with offences for which property is forfeitable on conviction.

An Act to provide for the adjudication of claims to property seized as forfeited.

Preamble.

Whereas it is expedient to make provision for the adjudication of claims to property seized as forfeited, with a view to the speedy determination of the same; and whereas it is also expedient to remove doubts concerning the powers of Officers or other persons to whom Commissions may have been issued for the trial of heinous offences in certain districts and concerning the validity of convictions and adjudications of forfeiture made by such Officers or other persons; It is enacted as follows:—

I. It shall be lawful for the Executive Governments of the Lower and North-Western Provinces of the Presidency of Bengal, to establish within any part of the Territories subject to their respective Governments, Courts of Special Commission for the trial and determination of claims to property seized as forfeited, and to assign, from time to time, such local jurisdiction to the Courts so established as may appear proper. Provided that no additional expense shall be incurred by the establishment of any such Court without the previous sanction of the Governor General of India in Council.

Courts of Special Commission to be established.

Proviso.

II. Every Court established under this Act shall consist of not less than three Commissioners who shall sit together for the trial and determination of claims; but any one or more of them shall have power to make all such orders as may be necessary for preparing the cases that may be instituted for trial and decision.

Court to consist of three Commissioners.

III. Whenever any Court shall be established under the provisions of this Act, with jurisdiction in any district or districts, notice thereof shall be given by a written proclamation, of which copies shall be affixed in the several Courts and in the offices of the several Collectors and magistrates of such district or districts; and the powers heretofore vested in the Courts of such district or districts in respect of all cases cognizable by the Courts established under this Act, shall be suspended until such Courts shall be informed, by an order under the signature of the Secretary to Government, that the local jurisdiction of such Court of Special Commission has ceased, of which notice shall be given by proclamation in the manner aforesaid.

Notification of establishment of Court in any District.

IV. Any case pending before any Court sitting as a Court of original jurisdiction at the time of the passing of this Act, in respect of a matter made cognizable by Courts established under its provisions, shall be transferred to the Court of Special Commission, within the limits of whose jurisdiction the property in dispute is situate, and such Court shall summon the defendant and proceed to dispose of the case in the same manner as if it had been instituted before it.

Transfer of pending suits.

V. The Courts established under this Act shall be held at

Court where to be held.

such place within the limits of their respective jurisdiction, as shall from time to time be appointed by the local Government.

Form of plaint.

VI. The plaint in suits instituted under this Act shall be written on the stamp paper prescribed for petitions of plaint in regular suits, and shall contain the following particulars, namely.

The name, description, and place of abode of the plaintiff, the relief sought for, the subject of the claim, and the cause of action; and if the suit be brought against a defendant other than the Government or some Officer on the part of Government, the name, description, and place of abode of such defendant.

Verification of plaint.

VII. The plaint shall be verified in the manner prescribed for the verification of plaints in Section XXVII. Act VIII. of 1859 (*for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter*); and if the plaint contain any averment which the person making the verification shall know or believe

Punishment for false averment in plaint.

to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Presentation of plaint.

VIII. The plaint may be presented by the plaintiff in person or by his duly constituted representative, either in the principal Civil Court of original jurisdiction in the district in which the property or any part of the property in dispute is situate, or in the Court of Special Commission having jurisdiction over the claim under this Act. If the plaint be not presented in the Court of Special Commission, it shall be forwarded to such Court without delay.

Procedure before hearing of suit.

IX. The Court shall fix a day for the appearance of the parties and for the hearing of the suit, of which due notice shall be given to the parties or their representatives, and on the day so fixed the parties shall bring their witnesses into Court, together with any documents on which they may intend to rely in support of their respective statements. If either party require the assistance

of the Court to procure the attendance of a witness on such day he shall apply to the Court in sufficient time before the day fixed for the hearing of the suit, and the Court shall issue a subpœna requiring such witness to attend the Court on that day. It shall be competent to the Court to require the personal attendance of the plaintiff on the day fixed for the hearing of the suit or at any subsequent stage.

Procedure on hearing.

X. On the day fixed for the hearing of the suit or as soon after as may be practicable, the Court shall proceed to examine the plaintiff or his representative (when his personal attendance is not required) and the witnesses of the parties, and upon such examination and after inspecting the documents of the parties and making any further enquiry that may appear necessary, shall proceed to pass such order in the case in respect both to the claim and to the costs of suit as it may consider just and proper.

Examination, &c. of witnesses.

XI. It shall not be necessary to take down the depositions of the witnesses in writing at length; but the Court, as the examination of each witness proceeds, shall reduce into writing the substance of what such witness deposes, and the deposition so taken shall form part of the record. In all other respects the provisions of the Regulations and Acts for procuring the attendance of witnesses and for the examination, remuneration, and punishment of witnesses in suits before the Civil Courts, shall be of equal force and effect in cases tried under this Act.

Decisions.

XII. The rules contained in Act XII. of 1843 *(concerning the time at which and the language in which the decisions of the Judges in the Courts of the East India Company are to be written)* shall be applicable to decisions passed under this Act.

No appeal.

XIII. No appeal shall lie from any decision passed under this Act, nor shall any such decision be open to revision.

Execution of decrees.

XIV. The decrees of the Courts of Special Commission established under this Act shall be enforced by the Civil Courts of the district in which the property in dispute is situate, under the rules applicable to the execution of decrees passed by those Courts.

XV. The records of cases disposed of by Courts established under this Act shall be deposited amongst the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

Records of cases where to be deposited.

XVI. Whenever any person shall have been convicted of an offence for which his property was forfeited to Government, no Court has power in any suit or proceeding relating to such property, to question the validity of the conviction.

Validity of convictions of offences involving forfeiture of property not to be questioned by any Court.

XVII. Whenever any person shall have been convicted as above by an Officer having power to try and convict, the validity of any such conviction shall not be questioned upon the ground that the record of the conviction does not show in what capacity such Officer acted, or that it represents him to have acted in a different capacity from that in which he had power to convict.

Validity of conviction not to be questioned because the record does not show in what capacity the convicting Officer acted.

XVIII. Whenever any property shall have been attached or seized without either conviction or an adjudication of forfeiture by any Officer of Government as property forfeited or liable to be forfeited to Government for an offence for which upon conviction the property of the offender would be forfeited, the validity of such attachment or seizure shall not be called in question by any Court or other authority in any suit or proceeding, unless the offender or alleged offender shall, within one year after the seizure of his property, have surrendered himself for trial and upon trial before a competent Court shall have been or shall be acquitted of the offence and shall prove to the satisfaction of the Court that he did not escape or keep out of the way for the purpose of evading justice. Nothing in this Section shall extend to persons entitled to pardon under Her Majesty's proclamation published in the Calcutta Gazette Extraordinary dated the 1st November 1858, or to any person who, having surrendered himself within the period of one year after the seizure of his property, shall be discharged by order of Government without a prosecution.

Property attached without adjudication of forfeiture.

Validity of such attachment not to be questioned unless offender surrender within one year and be acquitted, &c.

Proviso.

XIX. No Judge or other person acting as Commissioner under the provisions of Acts XIV. and XVI. of 1857 has power to release property attached or seized as forfeited or as liable to be forfeited to Government except under the provisions of Section VIII. Act XXV. of 1857, when the offender or alleged offender shall have surrendered himself for trial and shall be tried and acquitted by such Judge or Commissioner, and shall prove that he did not escape or keep out of the way for the purpose of evading justice; and any order passed by any such Judge or Commissioner for the release of any property attached or seized as forfeited or liable to be forfeited to Government, except upon the acquittal before him of the person accused, and upon proof that he did not escape or keep out of the way for the purpose of evading justice, is hereby declared null and void.

Release of property attached as forfeited.

XX. Nothing in this Act shall be held to affect the rights of parties not charged with any offence for which upon conviction the property of the offender is forfeited, in respect of any property attached or seized as forfeited or liable to be forfeited to Government; provided that no suit brought by any party in respect of such property shall be entertained unless it be instituted within the period of one year from the date of the attachment or seizure of the property to which the suit relates.

Act not to affect the rights of parties not charged with an offence punishable by forfeiture of property.

Proviso.

BENGAL.—RECOVERY OF RENTS.

ACT No. X. OF 1859.

[*Passed on the 29th April,* 1859.

1. Repeals R. 8, 1793 partially; R. 17, 1793; R. 4, 1794; R. 35, 1795; R. 45, 1795; R. 51, 1795, ss. 9 and 10; R. 7, 1799, ss. 1 to 20; R. 5, 1800 ss. 1 to 20; R. 28, 1803; R. 30, 1803, ss. 9 and 10, and otherwise partially; R. 2, 1805, s. 4; R. 8, 1805, s. 19; R. 5, 1812, ss. 5 to 23; R. 19 1817, ss. 15 and 16; R. 20, 1817, s. 27; R. 8, 1819, ss. 18 and 19; R. 2, 1821, s. 4; R. 7. 1822, s. 22 and ss. 20 and following partially; R. 14, 1824; R. 8, 1831; R. 9, 1833, ss. 14 and 15 partially; Act I. 1839; Act I. 1845, s. 26 partially; Act X. 1846; Act VIII. 1848.

2, 3, 4, 5. Entitles every renter of land to a pottah containing specified particulars; and (3) at the old rent if not changed from time of permanent

settlement; or (4) if not changed for past 20 years; or (5) at equitable rate if liable to be changed.

6, 7, 8. Declares that ryot has a right of occupancy if he has held for 12 years, except in specified lands; and where (7) a special tenancy exists; in which cases (8) terms to depend on agreement of the parties.

9. Ryot receiving pottah to give counterpart engagement.

10. Prohibits exaction beyond rent reserved and entitles ryot to receipt for rent paid.

11. Abolishes the power of Zemindar to compel the attendance of a ryot &c. at his cutcherry.

12. Extortion of rent by duress, to be subject to fine, besides common law liability.

13, 14. Rent of specified land of tenants not to be raised without previous notice given; and (14) tenant may contest his liability.

15, 16. Dependant Talookdar with permanent tenure at rent not changed since 1793, not liable to have his rent enhanced; and (16) if rent not changed for 20 years, it is to be presumed the rent of 1793.

17. Defines the grounds on which rent of ryot having right of occupancy may be enhanced.

18. Entitles ryot to an abatement of rent for land lost by diluvion.

19. Entitles ryot to put an end to liability for rent by giving notice in Cheit.

20, 21, 22. Arrear of rent to bear twelve per cent. interest; and (21) ryot may be ejected for arrears of rent by process of law; and (22) lease may be cancelled for same cause.

23, 24, 25. Gives the Collector jurisdiction in specified suits and complaints against ryots; and (24) in Suits by Zemindars against sureties and agents; and (25) in Suits for ejectment of cultivators.

26. Entitles Zemindar to have lands measured, when rent is payable according to measurement, &c.

27. Obliges dependant Talookdars to register transfers in the Sheristah of the Zemindar, &c.

28. Repeals partially R. 19, 1793, s. 10; R. 41, 1795, s. 10 partially; R. 31, 1803, s. 6 partially; R. 8, 1805, s. 21 partially; R. 12, 1805, s. 24 partially, and substitutes new regulations instead.

29. Applies to Surburakers and Tuhseeldars of khas lands all the above rules respecting suits by and against Zemindars.

30. All actions under this Act to be brought within one year of cause of action accruing except where other limit is fixed.

31. Suits for delivery of pottahs, &c. may be instituted at any time during tenancy.

32, 33. Suits for recovery of rents must be brought within 3 years from the end of the year in arrear: (33) and for recovery of money in hands of agent or for delivery of accounts, &c. during agency or within a year after, except in case of fraud, and then within one year after discovery thereof.

34, 35, 36, 37. Suits under this act to be commenced in Collectorate by plaint, &c. (35) which shall be presented by plaintiff or a person having a knowledge of its truth; (36) and shall be verified, &c. and (37) plaint to be on stamped paper of specified value, and no stamps to be required on filing documents, &c.

38, 39. Documents relied on as proof to be delivered with plaint; and (39) plaintiff is also entitled to order for production of documents by defendant.

40, 41, 42. Plaint for arrear of rent to contain what; and (41) plaint for ejectment, what; if otherwise drawn (42) it may be returned.

43, 44, 45, 46. Summons to be issued, if plaint be proper; (44) and to fix a day, &c. and (45) to be served how; (46) Nazirs to indorse time and mode of service.

47. Service at a distance to be made, how.

48. Costs of summons must be prepaid.

49, 50, 51. Warrant may be issued for arrest of defendant in what Suits and under what circumstances; (50) who on arrest must be brought before Collector, &c. (51) who shall try the case early, &c. and may require security, &c.

52. In case of non-arrest, defendant may be proclaimed, &c.

53. In case of arrest of defendant without reasonable causes, Collector may award compensation up to 100 rupees.

54, 55, 56, 57. Case to be struck off the file, if neither party appear, &c.; or (55) judgment be given by default against plaintiff if only defendant appears; or (56) if only plaintiff appears Collector may proceed exparte and give judgment; and (57) in case of subsequent appearance of defendant, the Collector may open the case on terms.

58—68. No appeal to lie against exparte judgment or judgment by default; but Collector may open the judgment for cause shewn; and (59) may then proceed to examine the parties; (60) on oath; and (61) any witness; and (62) documents shall be produced; and (63) a decree be made according to the evidence; or (64) under circumstances stated, case may be further adjourned; and (65) a future day be fixed for trial; when (66) the trial shall proceed in the usual manner; subject (67) to all existing rules relating to witnesses, &c.; and (68) on default of appearance of both parties, case to be struck off the file.

69. In suits instituted or defended by Naibs, &c. such persons to be subject to same provisions, &c. as parties.

70. Parties of privileged sex or rank exempted from personal attendance.

71. Suits may be conducted by agents, &c.

72. Time may be given to parties for cause shewn.

73. Collector may cause local enquiry to be made.

74, 75. Defendant may pay into Court, satisfaction for demand; plaintiff may proceed afterwards at peril of costs; and (75) not to receive interest on amount paid into Court.

76. In Suits for delivery of pottah, Collector may fix the term of tenancy but not beyond 10 years, nor for longer period than the parent term.

77. In case of rival claim by some third person, such person to be made a party.

78. In suits for ejectment of ryot, &c. unexecuted decree to be evidence.

79. Collector to give judgment in open Court in his own vernacular.

80. Under a decree for delivery of a pottah, Collector may execute a pottah, if defendant refuses to do so.

81. Under a decree for delivery of a kubooleut, the decree to be of same effect as a kubooleut if kubooleut is not delivered.

82. Magistrate in case of need to give effect to decree for possession of land.

83. Decrees for cancelment of lease, &c. to be proclaimed by beat of drum, &c.

84. Under decree against defendant in jail, Collector may order his detention in default of satisfaction.

85. Surety to deliver up judgment debtor, or liable himself to process in execution.

86. Execution may go against either property or person but not against both at same time.

87. All movable property liable to execution, but list to be furnished by judgment creditor for purpose of seizure.

88, 89. Warrant of execution to be signed by Collector, and to be in force specified time; after which (89) fresh warrant may be issued, &c.

90—92. On decrees more than a year old, notice to be given of execution; and (91) execution not to issue against representatives without notice; and (92) no execution to issue on judgments more than three years old, except in specified case.

93. Judgment debtor when taken in execution, to be brought before Collector, who may commit him to prison for period specified according to amount of decree.

94. No person to be taken in execution a second time on same judgment.

95—97. Diet money to be paid before warrant is issued; and (96) be payable monthly; and (97) to be reckoned as costs.

98, 99. Under execution against movable property, officer to make a list of property and proclaim it; and (99) sale not to be till 10 days afterwards.

100—103. If third party claimant to it appears, Collector to examine the claim; and (101) decide it; and (102) award costs on litigation; (103) and no appeal to lie from his decision, but party may try his right by Civil suit.

104. Irregularity in sale not to affect its validity.

105—107. Undertenures when transferable by custom, may be sold in execution; and (106) in case of third party claimant appearing, Collector to receive and (107) try his claim.

108. Share of joint undivided estate, &c. not to be sold till execution against movable property has failed.

109. After failure of execution against movable property in specified cases, execution may go against immovable.

110. Process in execution against immovable property to be the same as by attachment and sale.

111. [illegible] objected to by some third party claiming the property as his own, the [illegible]ector is to stay the sale and examine the claim.

112, 113. The owners of rent to have a lien on the produce of the land for the rent, and may distrain, unless security for payment has been given; but (113) distress not to be available for more than a year's rent.

114, 115, 116. Manager under Court of wards &c. may exercise power of distraining, &c.; (115) may distrain standing crops, &c.; (116) having first made a demand of the arrear.

117. Person distraining to make a list of things distrained and deliver it to the owner.

118. Standing crops, &c may be reaped, &c. by cultivator notwithstanding distress, &c.

119. Distrainer may in case of need call for the aid of the Collector.

120. Distraining bailiff to have written authority.

121, 122, 123, 124. Distress to be withdrawn on tender of arrears; and (122) not sold till expiration of five days, &c. and sale to be by Civil Court Ameen; (123) on written application; copy of which (124) shall be sent to Collector, who shall make proclamation, &c.

125, 126. If suit instituted to contest the distress, the Ameen shall suspend proceedings; and (126) such suit may be instituted before notice of distraint.

127. Owner of property distrained may execute Bond and obtain release of distress.

128. Sale of distress to be proceeded with if not stayed by intermediate proceedings,

129, 130, 131, 132. Sale to be where; and (130) may be postponed if no fair biddings; and (131) Sale to be for ready money; and (132) costs to be paid out of proceeds.

133. Sale Officers not to be purchasers.

134. Sale Ameens are to report irregularities of distress.

135. Sale Ameens to be paid under specified circumstances though no sale takes place.

136. Proceedings of sale Ameens to be under revision, &c. of Collectors, &c.

137. Sale to proceed if security be not given to abide the event of contest of legality of the distress.

138. In suit to contest legality of distress, distrainer to prove right to distrain.

139, 140. If property of third person is distrained, he may institute suit against distrainer; and (140) if right to distrain be claimed by some third person adversely to distrainer, such third person to be made a party.

141. After sale of property wrongfully distrained owner may sue for damages.

142, 143, 144. Distraining bailiff liable to action; and (143) persons distraining without authority to be liable criminally as well as to damages; but (144) suit to be brought within three months after cause of action.

145. Illegal resistance of legal distress to be punishable with six months' imprisonment, &c.

146, 147. All processes under this Act to be under seal of Collecter, &c.; and (147) all resistance to process to be dealt with under the general law.

148. Collector may hold Court at any place within the limits of his Collectorate.

149. Mokhtiars may practise in Collector's Court without his licence, subject to specified consequences for illegal conduct.

150, 151. All powers given to Collectors may by delegation be exercised by his Deputy; and (151) Collectors and Deputies to be subject to Commissioners and Boards of Revenue.

152. Appeal to lie from Deputy to Collector, from Collector to Commissioner; the former to be brought within 15 days, the latter within 30; and neither appealable further.

153, 154. In suits under s. 23, c. 2, 4, 7, for amount not exceeding rupees 100, Collector's decision to be final, unless specified right be in question; and then and in all other cases, appeal to lie to Sudder; and (154) where Collector's decision final, Collector may himself order re-hearing.

155 Decision of Deputy Collector in no case to be final.

156. Petitions of appeal to be on stamped paper.

157, to 159. Collector to fix day for hearing appeal, and may give judgment by default or exparte, as case may be, and (158) if dismissed for default may be re-admitted on cause shown; and (159) Collector to give judgment as in regular suits.

160. In all cases not otherwise provided for, an appeal to lie from the Collector or Deputy to the Zillah Judge, unless the amount in dispute exceed Rs. 5000, in which case appeal to lie to the Sudder.

161. Stamps in appeals to the Zillah Judges and Sudder to be according to the general Stamp laws.

162, 163. Suits under this Act to be brought in the Court of the subdivision where cause arose within its jurisdiction; and (163) Collector not to have jurisdiction out of his district by reason of receiving revenues of an estate out of his local jurisdiction.

164, 165. Deputy Collector having Police functions, not to exercise powers under this Act; nor (165) Assistants at all unless vested with powers of Deputy Collectors.

166. Nothing in this Act to derogate from the rights vested in landed proprietors under Reg. 8, 1819, in regard to Putnee Talooks.

167. Act to commence from 1st Aug. 1859.

168. Interprets words, viz. "Civil Jail," "Nazir," &c.

An Act to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal.

Whereas it is expedient to re-enact with certain modifications the provisions of the existing law relative to the rights of ryots with respect to the delivery of pottahs and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same; to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears; and to amend the law relating to distraint; It is enacted as follows:—

Preamble.

I. The following Regulations and Acts and portions of Regulations and Acts are hereby repealed, except in so far as they repeal any other Regulation or Act, and except as to proceedings commenced before the date of this Act coming into force, namely—

Laws repealed.

Regulation XVII. 1793 (*to empower landholders to distrain and sell the personal property of ryots, &c.*).

So much of Regulation IV. 1794 (*to determine disputes regarding the grant of pottahs to ryots, &c.*) as is still in force.

Regulation XXXV. 1795 (*for better enabling individuals to recover arrears of rent or revenue due to them*).

Regulation XLV. 1795 (*to empower landholders in the Province of Benares to distrain &c.*).

Sections IX. and X. Regulation LI. 1795 (*respecting ryotty pottahs in the Province of Benares*).

Sections I to XX Regulation VII. 1799 (*to enable landholders to realize their rents with greater punctuality &c.*).

Sections I. to XX. Regulation V. 1800 (*to enable landholders in the Province of Benares to realize their rents with greater punctuality. &c.*).

Regulation XXVIII. 1803 (*to empower landholders in the Ceded Provinces to distrain, &c.*).

Sections IX. and X. Regulation XXX. 1803 (*prescribing rules for the grant in the Ceded Provinces of pottahs to ryots, &c.*).

Section IV. Regulation II. 1805 (*to provide a limitation of time for certain suits, &c.*).

Section XIX. Regulation VIII. 1805 (*for extending certain Regulations to the Ceded and Conquered Provinces, &c.*).

Sections V. to XXIII. Regulation V. 1812 (*for amending some*

of the rules at present in force for the collection of the Land Revenue).

Sections XV. and XVI. Regulation XIX. 1817 *(for amending certain Regulations in force relative to process for recovery of arrears of rent).*

Sections XXVII. Regulation XX. 1817 *(relating to resistance to distraint for arrears of rent, &c.).*

Sections XVIII. and XIX. Regulation VIII. 1819, *relating to Putnee Talooks and the system established for the collection of rents generally &c.),*

Section IV. Regulation II. 1821 *(relating to the duties of City and Zillah Judges, &c.).*

Section XXII. and so much of Section XX. and the following Sections of Regulation VII. 1822 *(relating to the settlement of the Land Revenue in the Ceded Provinces and Cuttack)* as apply to suits for rent, to complaints of excessive demand or undue exaction of rent, or of the non-delivery of pottahs or receipts, to suits against agents for money or accounts, or to any other suits or complaints arising out of disputes between landholders or farmers and their under-tenants respecting the rent and occupancy of land.

Regulation XIV. 1824 *(for modifying the rules in force for referring to the Collectors summary suits in cases of arrear or exaction of rent).*

Regulation VIII. 1831 *(for amending the existing provisions relative to the trial of summary suits and claims for arrears or exactions of rent).*

Act I. of 1839 *(relating to the appointment of persons to sell property distrained for the recovery of arrears of rent).*

Act X. of 1846 *(for regulating the proceedings in certain cases of distraint for arrears of rent),* and

Act VIII. of 1848 *(to modify the provisions of Sections IX., X., XI., and XIII. of Regulation V. 1812 of the Bengal Code).*

Sections XIV. and XV. Regulation IX. 1833 *(for the more speedy decision of certain suits, and for enforcing the production of village accounts),* so far as the same are applicable to the territories under the Government of the Lieutenant-Governor of Bengal, are also repealed.

Such parts of Regulation VIII. 1793 *(prescribing rules for the*

decennial settlement of the public Revenue in Bengal, Behar, and Orissa), and Regulation XXX. 1803, as relate to the adjudication of penalties for the refusal of pottahs and receipts for rent and for the exaction of any sums as abwab or in excess of the amount specified in any engagements for the payment of rent, and such parts of Section XXVI. Act I. of 1845 *(to amend Act No. XII. of* 1841, *entitled "an Act for amending the Bengal Code in regard to sales of land for arrears of Revenue"),* as relate to the enhancement of rents and the ejectment of tenants by the purchaser of an estate sold for arrears of Government Revenue, are declared subject to the following modifications.

Ryot entitled to a pottah.

II. Every ryot is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable, a pottah containing the following particulars:

The quantity of land; and where fields have been numbered in a Government survey, the number of each field.

The amount of annual rent.

The instalments in which the same is to be paid.

And any special conditions of the lease.

If the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery.

Ryots holding land at fixed rates to receive pottahs.

III. Ryots who, in the Provinces of Bengal, Behar, Orissa, and Benares, hold lands at fixed rates of rent, which have not been changed from the time of the permanent settlement are entitled to receive pottahs at those rates.

If rent of land be not changed for 20 years.

IV. Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a ryot in the said Provinces, has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

Ryots having right of occupancy but not holding at fixed rates, to receive pottahs.

V. Ryots having rights of occupancy, but not holding at fixed rates, as described in the two preceding Sections, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the

rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

Right of occupancy of ryot cultivating or holding land for 12 years.

VI. Every ryot who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same ; but this rule does not apply to khomar, neejjote, or seer land belonging to the proprietor of the estate or tenure and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sub-let for a term, or year by year by a ryot having a right of occupancy. The holding of the father, or other person from whom a ryot inherits, shall be deemed to be the holding of the ryot within the meaning of this Section.

Saving of terms of written contracts.

VII. Nothing contained in the last preceding Section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot when it contains any express stipulation contrary thereto.

Pottahs to which ryots not having rights of occupancy are entitled.

VIII. Ryots not having rights of occupancy are entitled to pottahs only at such rates as may be agreed on between them and the persons to whom the rent is payable.

Person granting pottah entitled to a counterpart engagement.

IX. Every person who grants a pottah is entitled to receive from the person to whom the pottah is granted a kubooliyet or counterpart engagement in conformity with the terms of the pottah. The tender to any ryot of a pottah such as the ryot is entitled to receive shall be held to entitle the person to whom the rent is payable to receive a kubooliyet from such ryot.

Exactions in excess of rent or receipt withheld.

X. Every under-tenant or ryot, from whom any sum is exacted in excess of the rent specified in his pottah, or payable under the provisions of this Act, whether as abwab or under any other pretext, and every under-tenant, ryot, or cultivator from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so exacted or paid. Receipts

Form of receipt.

for rent shall specify the year or years on account of which the rent is acknowledged to have been paid; and any refusal to make such specification shall be held to be a withholding of a receipt.

Landholder not to compel the attendance of tenant for adjustment of rent or for any other purpose.

Payment of rent to be enforced only under this Act.

XI. The power heretofore vested in Zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose is withdrawn, and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them other than are authorized by the provisions of this Act.

Damages for extorting payment of rent by duress.

XII. If payment of rent, whether the same be legally due or not, is extorted from any under-tenant or ryot by illegal confinement or other duress, such under-tenant or ryot shall be entitled to recover such damages, not exceeding in any case the sum of two hundred Rupees, as may be deemed a reasonable compensation for the injury done him by such extortion. An award of compensation under this Section shall not bar or affect any penalty or punishment to which the persons practising such extortion may be subject by law.

Enhancement of rent of ryot holding without, or after expiry &c of written engagement.

XIII. No under-tenant or ryot, who holds or cultivates land without a written engagement not specifying the period of such engagement, or whose engagement has expired, or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held cultivated by him is situate, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or ryot, in or before the month of Cheit, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed. Such notice shall be served by order of the Collector on the application (which may be on plain paper) of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or ryot. If for any reason the notice cannot be served personally upon the under-tenant or ryot, it shall be affix-

ed at his usual place of residence, or if he have no such place of residence in the District in which the land is situate, the mode of service of such notice shall be by affixing it at the Mal-cutcherry of such land or other conspicuous place thereon, or at the village Chowree or Chowpal or at some other conspicuous place in the village in which the land is situate.

Mode of contesting enhancement of rent.

XIV. Any under-tenant or ryot, on whom such notice as aforesaid has been served, may contest his liability to pay the enchanced rent demanded of him, either by complaint of excessive demand of rent as hereinafter provided, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent.

Dependent talookdar &c. holding land at fixed rent without change since permanent settlement not liable to enhancement of rent.

XV. No dependent talookdar or other person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the ryots, who, in the Provinces of Bengal, Behar, Orissa, and Benares, holds his talook or tenure (otherwise than under a terminable lease) at a fixed rent, which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in Section LI. Regulation VIII. 1793, or in any other law, to the contrary notwithstanding.

Rent of talookdar &c. not changed for twenty years to be *primâ facie* evidence of occupancy at that rent since permanent settlement.

XVI. Whenever, in any suit under this Act it shall be proved that the rent at which a talook or other tenure is held in the said Provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such talook or tenure has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.

Grounds on which ryot having right of occupancy is liable to enhanced rent.

XVII. No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him except on some one of the following grounds, namely:—

That the rate paid by him is below that prevailing in adjacent places.

That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

That the value of the land, &c. has increased independently of the ryot.

That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

That the quantity of land held by the ryot is greater than he has paid rent for.

That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

When ryot may claim abatement of rent.

XVIII. Every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot, or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

Relinquishment of land by ryot after notice given.

XIX. Any ryot who desires to relinquish the land held or cultivated by him, shall be at liberty to do so, provided he gives notice of his intention in writing to the person entitled to the rent of the land or his authorized agent in or before the month of Cheit of the year preceding that in which the relinquishment is to have effect. If he fail to give such notice, and the land is not let to any other peron, he shall continue liable for the rent of the land. If the person entitled to the land or his agent refuse to receive any such notice and to sign a receipt for the same, the ryot may make an application on plain paper to the Collector who shall thereupon cause the notice to be served on such person or his agent in the manner provided in Section XIII.

What to be deemed an arrear of rent under this Act.

XX. Any instalment of rent which is not paid on or before the day when the same is payable according to the pottah or engagement, or, if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage, shall be held to be an arrear of rent under this Act, and unless otherwise provided by written agreement, shall be liable to interest at twelve per centum per annum.

XXI. When an arrear of rent remains due from any ryot at the end of the Bengal year or the end of the month of Jeth of the Fusly or Willayutee year as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due. Provided that no ryot, having a right of occupancy or holding under a pottah the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Liability of ryot to be ejected for arrear due.

Proviso.

XXII. When an arrear of rent shall be adjudged to be due from any farmer or other lease-holder not having a permanent or transferable interest in the land, the lease of such lease-holder shall be liable to be cancelled, and the lease-holder to be ejected. Provided that no such lease shall be cancelled nor the lease-holder ejected otherwise than in execution of a decree or order under the provisions of this Act.

Liability of farmer to have his lease cancelled for arrear adjudged due.

Proviso.

XXIII. 1. All suits for the delivery of pottahs or kubooliyets or for the determination of the rates of rent at which such pottahs or kubooliyets are to be delivered;

Cognizance of suits under this Act.

2. All suits for damages on account of the illegal exaction of rent or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress;

3. All complaints of excessive demand of rent, and all claims to abatement of rent;

4. All suits for arrears of rent due on account of land either kherajee or lakheraj, or on account of any rights of pasturage, forest-rights, fisheries, or the like;

5. All suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment or a lease may be liable to be cancelled;

6. All suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same;

7. All suits arising out of the exercise of the power of distraint conferred on Zemindars and others by Sections CXII. and CXIV. of this Act, or out of any acts done under color of the exercise of the said power as hereinafter particularly provided; shall be cognizable by the Collectors of land revenue and shall be instituted and tried under the provisions of this Act and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court or by any other Officer or in any other manner.

Suits by Zemindars against their agents for money or accounts.

XXIV. Suits by Zemindars and others in receipt of the rent of land, against any agents employed by them in the management of land or collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession, shall be cognizable by the Collectors, and shall be instituted and tried under the provisions of this Act, and shall not be cognizable in any other Court except in the way of appeal as provided in this Act.

Ejectment of cultivators, farmer, &c. by Zemindars.

XXV. If any Zemindar or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated ticca zur-i-peshgee or the like, in which an advance has been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court.

Proviso.

Measurement of lands.

XXVI. When rent is payable by an under-tenant or ryot at a certain rate or rates according to the quantity of land held or cultivated by him, or when any written

engagement conditioned for the payment of a certain amount of rent on account of land held or cultivated by an under-tenant or ryot has expired or become cancelled by the sale for arrears of revenue or rent of the estate or tenure in which the land is situate, the person to whom the rent is payable has a right to measure such land for the purpose of ascertaining the quantity of land actually held or cultivated by such under-tenant or ryot. And every proprietor of an estate or tenure has a right of making a general survey or measurement of the lands comprised in such estate or tenure unless restrained from doing so by express engagement with the occupants of the lands. If any person intending to measure any land which he has a right to measure is opposed in making such measurement by the occupant of the land, or if any under-tenant or ryot, having received notice of the intended measurement of land held or cultivated by him which is liable to such measurement, refuses to attend and point out such land, such person may make application to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act, and shall pass an order either allowing or disallowing the measurement, and, if the case so require, enjoining or excusing the attendance of any such under-tenant or ryot. If any under-tenant or ryot after the issue of an order enjoining his attendance neglects to attend, it shall not be competent to him to contest the correctness of the measurement made in his absence.

Registry of transfers of talooks &c.

XXVII. All dependent talookdars and other persons possessing a permanent transferable interest in land intermediate between the Zemindar and the cultivator are required to register, in the Sherishteh of the Zemindar or superior tenant to whom the rents of their talooks or tenures are payable, all transfers of such talooks or tenures, or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every Zemindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and all such successions and divisions. If any Zemindar or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferree or successor may make application to the

Collector and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act, and if no sufficient grounds are shown for the refusal, shall pass an order enjoining the Zemindar or superior tenant to admit to registry and otherwise give effect to such transfer or succession.

Proviso. Provided that no Zemindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the Zemindar or superior tenant.

Applications to dispossess grantees of land exempt from revenue.

XXVIII. So much of Section X. Regulation XIX. 1793, Section X. Regulation XLI. 1795, Section VI. Regulation XXXI. 1803, Section XXI. Regulation VIII. 1805, and Section XXIV. Regulation XII. 1805, as authorizes and requires proprietors and farmers of estates and dependent talooks, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said Sections, of their own authority to collect the rents of such land and to dispossess the grantees of the proprietary right in the land and to re-annex it to the estate or talook in which it may be situate, is repealed; and any proprietor or farmer who may desire to assess any such land or to dispossess any such grantee shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this act. Every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued. If such period has already elapsed, or will elapse within two years from the date of the passing of this Act, such suit may be brought at any time within two years from such date.

Suits by or against Surburakars or Tuhseeldars of estates held khas.

XXIX. All suits which under the provisions of this Act may be brought by or against Zemindars or other persons in the receipt of the rent of land, may be brought by or against Surburakars or Tuhseeldars of estates held under khas management, whether such estates are the property of Government or of individuals.

If the Collector or the Suburakar or Tuhseeldar of any such estate in the provinces of Bengal, Behar, and Orissa proceed against any defaulting ryot or under-tenant of such estate under the powers vested in him by Section XXV. Regulation VII. 1799, and not according to the provisions of this Act, such ryot or under-tenant may contest the demand on account of which he is so proceeded against by suit in the Civil Court.

Time for commencement of suits generally.

XXX. Except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action.

Time for commencement of suits for grant of pottahs, &c.

XXXI. Suits for the delivery of pottahs or kubooliyets and for the determination of the rates of rent at which such pottahs or kubooliyets are to be delivered, may be instituted at any time during the tenancy.

Time for the commencement of suits for arrears of rent.

XXXII. Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year, or from the last day of the month of Jeth of the Fusly or Willayuttee year in which the arrear claimed shall have become due. For arrears of rent due at the passing of this Act, or suit shall be brought within three years after the passing of this Act; or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire.

Proviso.

Provided that, if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under Section XIII. and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengal year or of the month of Jeth of the Fusly or Willayuttee year, on account of which such enhanced rent is claimed.

Time for the commencement of suits against agents for money, papers, or accounts.

XXXIII. Suits for the recovery of money in the hands of an agent or for the delivery of accounts or papers by agent, may be brought at any time during the agency, or within one year after the determination of the agency of such agent, or in the case of claims now existing within one year after the passing

of this Act or within the period now allowed for the institution of such suits in the Civil Court whichever may first expire. Provided that if the person having the right to sue shall, by means of fraud, have been kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person; but no such suit shall in any case (except the case of claims now existing as aforesaid) be brought at any time exceeding three years from the termination of the agency.

Proviso.

XXXIV. Suits under this Act shall be instituted by presenting to Collector a plaint or statement of claim which shall contain the name, description, and place of abode of the plaintiff; the name, description, and place of abode of the defendant, so far as they can be ascertained; the substance of the claim, and the date of the cause of action.

Mode of instituting suits. Form of plaint or statement of claim.

XXXV. The statement of claim shall be presented by the plaintiff, or by an authorized agent of the plaintiff who has personal knowledge of the facts of the case, or by an agent who shall be accompanied by a person who has such knowledge.

Statement by whom to be presented.

XXXVI. The statement of claim shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect:

Verification of statement.

I, A. B. do declare that the above statement is true to the best of my knowledge and belief.

If the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

Punishment for false verification.

XXXVII. In suits for the recovery of arrears of rent or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court. In all other suits the state-

Statement of claim to be written on stamped paper.

ment shall be written on paper bearing a stamp of the value of eight annas. No stamp shall be required in respect of the production or filing of any document, or the summoning of any witness, or of any application for the execution of any order or judgment passed in a suit under this Act.

No stamp duty to be required for filing documents, &c.

XXXVIII. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Collector at the time of presenting his statement of claim. Unless such document be delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

Documentary evidence to be produced by plaintiff.

XXXIX. If the plaintiff require the production of any document in the possession or power of the defendant, he may at the time of presenting his statement of claim, deliver to the Collector a description of the document in order that the defendant may be required to produce the same.

If plaintiff require production of document from defendant.

XL. If the suit be for the recovery of an arrear of rent, the statement shall specify the name of the village and estate, and of the Pergunnah or other local division in which the land is situate; and if the arrear is alleged to be due from any ryot, the quantity of land, and where fields have been numbered in a Government Survey, the number of each field; the yearly rent of the land, the amount (if any) received on account of the year for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due.

Form of plaint in suits for arrears of rent.

XLI. If the suit be for the ejectment of ryot, farmer, or tenant, from any land, farm, or tenure, or for the recovery of the occupancy or possession of any land, farm, or tenure, the statement shall describe (as circumstances may require) the extent, situation, and designation of the same; and if necessary for the identification of the land, shall set forth the boundaries of such land.

Form of plaint in suits for ejectment of ryot, &c. or for recovery of occupancy or possession of land, &c.

XLII. If the statement of claim do not contain the several

Statement may be returned or allowed to be amended.

particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Collector may return the statement to the plaintiff, or at his discretion allow it to be amended.

Issue of summons; personal attendance of defendant may be required.

XLIII. If the statement of claim be in proper form, the Collector, except as otherwise hereinafter especially provided, shall direct the issue of a summons to the defendant, and if the plaintiff require the personal attendance of the defendant, and satisfy the Collector that such personal attendance is necessary, or the Collector of his own accord require such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons, otherwise the summons shall order the defendant to appear personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or who shall be accompanied by a person who has such personal knowledge.

The day to be specified in the summons how to be fixed. Defendant to be ordered to produce necessary documents, and to bring witnesses willing to attend without process.

XLIV. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held, and the summons shall order the defendant to produce any document which he may have in his possession, of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence. It shall also enjoin him to bring with him his witnesses if they are willing to attend without issue of process; and shall be in the form A contained in the Schedule to this Act, or to the like effect.

Summons how to be served.

XLV. The summons shall be served by delivering a copy of the summons to the defendant personally when practicable; or if the summons cannot be served on the defendant personally, by affixing a copy of it to some conspicuous part of his usual place of abode, and also affixing a copy of the same in the Collector's Office.

Endorsement by Nazir if summons has been personally served or not.

XLVI. If the summons be served personally, the Nazir shall endorse on the summons the fact of such service. If personal service be not effected, the Nazir shall endorse on the summons the reason of not serving it personally, and how it has been served.

XLVII. If the usual place of abode of the defendant be in another district, the summons, together with the cost of the service thereof, shall be sent by the public post to the Collector of such District, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the Officer by whom it was transmitted to him.

Execution of process in another District.

XLVIII. The amount of the cost of serving the summons, or if a warrant be issued as provided in the next succeeding Section, of serving the warrant, shall in all cases be deposited in Court upon the same day or the day next following that on which the plaint or statement of claim is presented to the Collector. If the said amount be not so deposited (except in cases in which the Collector may allow the issue of summons free of cost under the discretion reserved to him in Section CXLVI.), the case shall not be brought on the file of suits; but in such case the plaintiff may present another plaint at any time within the period allowed by the rules for the limitation of actions.

Cost of serving summons or warrant to be deposited in Court.

XLIX. If in any suit against an under-tenant or ryot for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers, or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, he shall present with his statement of claim an application for the issue of such warrant. When such application is presented, the Collector shall examine the plaintiff or his Agent, on his oath or affirmation or otherwise according to the law for the time being in force in relation to the examination of witnesses, and inspect the documents adduced by him in support of his claim, and if there be *prima facie* grounds for believing the claim to be well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Collector may issue a warrant for the arrest of the defendant. The Collector shall fix a reasonable time for the return of the warrant which shall be in the form (B) contained in the Schedule to this Act, or to the like effect, and the Officer entrusted with the service of the warrant shall at the time of arresting the defendant deliver to him a notice addressed to the defendant (which shall be in the form (C) in the Schedule or to the like effect) containing the

Warrant of arrest in what cases to be issued.

particulars of the claim, and requiring the defendant, if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence. But no such warrant shall be issued in a suit for arrears of rent due in respect of a dependent talook or other transferable tenure, which, as hereinafter provided, is liable to sale in execution of any decree which may be passed in the case.

Procedure after arrest of defendant.

L. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Collector, and the Collector shall commit him to custody unless he deposit in Court such sum as may be specified in the notice.

Procedure when defendant is brought before the Collector under warrant.

LI. When a defendant is brought before the Collector under warrant, the Collector shall with all convenient speed proceed to try the case in the manner hereinafter provided; and if the suit cannot be at once adjudicated, the Collector may, if he think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is depending or until execution of the final decree which may be passed thereon, and may commit the defendant to the Civil Jail to be there detained until he shall furnish such security or deposit such sum as the Collector shall order. The security bond shall be in the form (D) contained in the Schedule to this Act or to the like effect.

Form of security bond.

Procedure if warrant of arrest cannot be served upon the defendant.

LII. If the defendant cannot be arrested under the warrant, the Collector, on the application of the plaintiff, shall either postpone the case for such period as he may think proper in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation to be affixed in his own Office and at the residence of the defendant fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice at the residence of the defendant. If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding Section.

Compensation for

LIII. If it shall appear to the Collector that the arrest of the defendant was applied for without reason-

arrest applied for without reasonable cause.

able cause, the Collector may in his decree award to the defendant such sum not exceeding one hundred Rupees as he may deem a reasonable compensation for any injury or loss which the defendant may have sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

Consequence of neither party appearing on the day of trial.

LIV. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case shall be struck off, with liberty to the plaintiff to bring a fresh suit unless precluded by the rules for the limitation of action.

If defendant only appear to dispute the demand, Collector shall pass judgment by default; but if defendant admit the claim, Collector shall decree upon such admission.

Proviso.

LV. If on any such day the defendant only appear, the Collector shall pass judgment against the plaintiff by default unless the defendant admit the cause of action, in which case the Collector shall proceed to give judgment for the plaintiff upon such admission without costs; provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

If plaintiff only appear, Collector may proceed *ex parte*.

LVI. If on any such day the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or oral evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

If defendant appear on a day to which the case is postponed, Collector may allow him to be heard in answer to the suit.

LVII. If the defendant shall appear on any subsequent day to which the hearing of the suit may be postponed under the last preceding Section, the Collector may, upon such conditions, if any, as to costs or otherwise as he may think proper, allow the defendant to be heard in answer

to the suit as if he had appeared on the day fixed for his attendance.

Revival, reversal, and alteration of decrees *ex parte* or by default.

LVIII. No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But in all such cases if the party against whom judgment has been given shall appear, either in person or by agent, if a plaintiff within fifteen days from the date of the Collector's order, and if a defendant within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shall show good and sufficient cause for his previous non-appearance and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and alter or rescind the decree, according to the justice of the case. But no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

On appearance of parties, the parties to be examined by the Collector, and may cross-examine each other.

LIX. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason to be recorded by the Collector, the Collector shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other. If either of the parties be not bound to attend personally, any agent by whom he shall appear, or any person who shall accompany such agent, shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally. At the time of examination the defendant, if he think fit, may file a written statement of his defence.

Examination of parties, &c.

LX. The examination of the parties or their agents or such other persons as aforesaid shall be upon oath or affirmation or otherwise according to the law for the time being in force relative to the examination of witnesses. The substance of the examination shall be reduced to writing in the vernacular language of the Collector and filed with the record.

LXI. If either of the parties shall bring forward a witness on such day, the Collector may take the evidence of such witness.

Witnesses to be examined.

LXII. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit; and unless such document be so delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

Documentary evidence to be produced by defendant.

LXIII. If after the examination required by Section LIX. and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Collector shall make his decree accordingly.

After examination, Collector may make his decree if no further evidence is required.

LXIV. If on such examination as aforesaid the agent of either party be unable to answer any material question relating to the case which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to answer as aforesaid shall attend in person on such day; and if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default or make such other order as he may deem proper in the circumstances of the case.

Consequence of inability of agent to answer.

LXV. If on such examination as aforesaid it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.

If necessary, Collector to record issue and to fix a day for hearing further evidence.

LXVI. The parties shall bring forward their witnesses on

Parties shall produce their witnesses on the day of trial; or Collector on application of either party, shall issue summons for the attendance of a witness.

the day of trial, and if either party require assistance to procure the attendance of a witness on such day either to give evidence or to produce a document, he shall apply to the Collector in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Collector shall issue a summons requiring such witness to attend.

Rules regarding attendance, examination, &c. of witnesses.

LXVII. The provisions of the Regulations and Acts and all other rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration, and punishment of witnesses, whether parties to the case or not, in cases before the Civil Courts of the Presidency of Bengal, shall, except so far as the same may be inconsistent with the provisions of this Act, apply to and be of equal force and effect in suits under this Act.

Consequence of parties not appearing on the day fixed for the trial of any issue.

LXVIII. If on the day fixed for the trial of any issue neither of the parties appear, the case shall be struck off under the conditions provided in Section LIV. If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party upon such proof as may be then before the Court.

Suits instituted or defended by Naibs, Gomastahs, &c.

LXIX. When suits under this Act are instituted or defended by Naibs, Gomastahs, or other persons employed in the collection of rent or management of land in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such Naibs, Gomastahs, or other persons; and any thing which by this Act is required or permitted to be done by a party in person, may be done by any such person as aforesaid. Processes served on any such person shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person, and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such person.

LXX. A plaintiff or defendant shall not be required to attend in person if of the female sex and of a rank or class which according to the custom and manners of the country would render it improper for her to appear in public.

Personal attendance of plaintiff or defendant not required in certain cases.

LXXI. Any party to a suit may employ an authorized agent or mookhtar to conduct the case on his behalf, but the appointment of such agent or mookhtar shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or any order of the Court; and no fee for any agent shall be charged as part of the costs of suit in any case under this Act.

Employment of authorized agents or mookhtars.

LXXII. The Collector may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to the production of further proof or for other sufficient reason to be recorded by the Collector, adjourn the hearing or further hearing of any case in such manner as to him may seem fit.

Collector may grant time or adjourn hearing.

LXXIII. The Collector may at any stage of a case cause a local enquiry and report respecting the matter in dispute to be made by any Officer subordinate to him, or by any other Officer of Government with the consent of the authority to whom such Officer is subordinate, or may himself proceed to the spot and make such local enquiry in person. The provisions of the law for the time being in force relative to local enquiries by Ameens or Commissioners under orders of the Civil Courts shall apply to any local enquiry made by any Officer under this Section, and, so far as they are applicable, to enquiries made by the Collector in person. In the latter case the Collector, after completing the enquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.

Collector may cause local enquiry to be made.

LXXIV. The defendant in any action under this Act may pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sum shall

Defendant may pay money into Court in satisfaction of the demand.

be paid to the plaintiff. If the defendant deposit less than the sum claimed and the plaintiff elect to proceed in the case, and ultimately recover no further sum than shall have been paid into Court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

If plaintiff elect to proceed and ultimately recover no further sum than that paid into Court, he shall be liable to the subsequent costs.

LXXV. No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

No interest on deposits.

LXXVI. If on the trial of a suit for the delivery of a pottah instituted by a ryot having a right of occupancy the parties do not agree as to the term for which the pottah is to be granted, the Collector shall fix such term as under the circumstances of the case he may think just and proper. Provided that the term shall not in any case be longer than ten years, and in estates not permanently settled shall not extend beyond the period for which the proprietor of the estate has engaged with Government. Provided also that, if the defendant be a farmer or other person having only a temporary interest in the land, the term of the pottah shall not extend beyond the period of the continuance of such interest. For cultivators not having a right of occupancy, the term of pottah shall be exclusively in the discretion of the person entitled to the rent of the land.

If on trial of suit for delivery of pottah parties do not agree as to the time for which the pottah is granted, Collector to fix the time.

Proviso.

LXXVII. When in any suit between a landholder and a ryot or under-tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the ryot or under-tenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person or a person through whom he claims has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be enquired into and the suit shall be decided according to the result of such enquiry. Provided al-

If in actions for rent a third claimant appear he is to be made a party to the suit.

Proviso.

ways that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

Suits for ejectment or cancelment of lease.

LXXVIII. Any person desiring to eject a ryot or to cancel a lease on account of non-payment of arrears of rent, may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of suits for the ejectment of a ryot or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount together with interests and costs of suit be paid into Court within fifteen days from the date of the decree, execution shall be stayed.

Judgment how to be pronounced.

LXXIX. The Collector shall pronounce judgment in open Court. The judgment shall be written in the Vernacular language of the Collector and shall contain the reasons for the same, and shall be dated and signed by the Collector at the time when it is pronounced.

If person required by the decree refuse to grant pottah, Collector may do so.

LXXX. When a decree is given for the delivery of a pottah if the person required by the decree to grant such pottah refuse or delay to grant the same, the Collector may grant a pottah in conformity with the terms of the decree under his own hand and seal, and such pottah shall be of the same force and effect as if granted by the person aforesaid.

Refusal of person to execute kubooliyet as required by the decree.

LXXXI. When a decree is given for the delivery of a kubooliyet, if the person required by the decree to execute such kubooliyet shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person, and a copy of the decree under the hand and seal of the Collector shall be of the same force and effect as a kubooliyet executed by the said person.

Mode of executing decree for ejectment or re-instatement of ryot.

LXXXII. If the decree be for the ejectment of any ryot from land occupied by him, or for the re-instatement of any ryot in the occupancy of land from which he has been ejected, the decree

shall be executed by giving the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy. If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the order is made, the Magistrate, on the application of the Collector, shall give effect to the same.

Punishment for obstructing execution.

LXXXIII. If the decree be for the cancelment of any lease or the ejectment of any farmer or other person (not being an actual cultivator) or for the re-instatement of any farmer or other such person in the possession of a farm or tenure from which he has been ejected, the decree shall be executed by proclaiming the substance of the decree to the cultivators or other occupants by beat of drum or in such other manner as may be customary, and affixing the same in some conspicuous place within or adjacent to the farm or tenure.

Mode of executing decree for cancelment of a lease or for ejectment or re-instatement of a farmer or tenant.

LXXXIV. If the decree be for arrears of rent or for money, papers, or accounts, and the defendant have been committed to jail or appear pursuant to the conditions of any security bond given under Section LI. the Collector may order that he be detained in or committed to the Civil jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree.

In what case a judgment debtor may be detained or imprisoned without issue of process of execution.

LXXXV. If the judgment-debtor have given security for his appearance and be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety. If the decree be for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety for the sum due under the bond in the same manner as if a decree for that sum had been passed against the surety.

Liability of surety on failure to deliver judgment-debtor into custody.

LXXXVI. Process of execution may be issued against either the person or the property of a judgment-debtor: but process shall not be issued simul-

Issue of process of execution.

taneously against both person and property. Process of execution against the person or movable property of a debtor shall be in the form (E) or (F) contained in the Schedule to this Act, or to the like effect.

Application for execution against movable property.

LXXXVII. Any movable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor, but if the creditor is unable to furnish such list he may apply for a general attachment of the debtor's effects to the amount of the judgment and costs. In either case the property to be seized shall be pointed out to the Officer entrusted with the execution of the process by the creditor or his agent.

How long warrant shall continue in force.

LXXXVIII. Every warrant of execution shall bear date on the day on which it is signed by the Collector and shall continue in force for such period as the Collector may direct, not being more than sixty days calculated from such date.

Second and successive warrants.

LXXXIX. Second and successive warrants of execution may be issued by order of the Collector on the application of the judgment-creditor after the expiration of the period fixed for the continuance in force of a previous warrant.

After one year execution not to issue without notice.

XC. Process of execution shall not be issued upon any judgment without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year shall have elapsed from the date of the judgment or from the date of the last previous application for execution.

Execution not to issue against heir or representative of a deceased party without notice.

XCI. Execution on a judgment shall not issue against the heir or other representative of a deceased party without notice to such heir or other representative to appear and be heard.

No process of execution to be issued three years after date of judgment.

XCII. No process of execution of any description whatsoever shall be issued, on a judgment under this Act, after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred Rupees, in which case the period within which execution may be had shall be regulated by the

general rules in force in respect to the period allowed for the execution of decrees of the Civil Courts.

XCIII. If a warrant issue for taking in execution the body of any person, the Officer charged with the execution of the warrant shall bring him with all convenient speed before the Collector. If such person shall not then deposit in Court the full amount specified in the warrant or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor, or satisfy the Collector that he has no present means of paying the debt, the Collector shall send him to the Civil Jail there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall in the meantime pay the full amount for the payment of which he is liable under the decree. Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three calendar months when the amount decreed exclusive of costs does not exceed fifty Rupees, or six calendar months when such amount does not exceed five hundred Rupees, or two years in any other case. If the decree against any person arrested under a warrant be for the delivery of papers or accounts and the papers or accounts shall not be delivered by him when he is brought before the Collector, such person may be committed to the Civil Jail there to remain for such time not exceeding six calendar months as the Collector shall direct, unless he shall in the meantime deliver the papers or accounts according to the terms of the decree.

Warrant against the person.

Limit of imprisonment.

If arrest be for non-delivery of accounts.

XCIV. Any person once discharged from jail shall not be imprisoned a second time under the same judgment. If the amount due under the decree do not exceed one hundred Rupees, the Collector may declare such discharged person absolved from further liability under that decree. In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to such person from attachment in execution of the same.

No person to be imprisoned a second time under same judgment.

XCV. Any person applying for a warrant of arrest under

Diet-money to be deposited at the time of issue of warrant.

Section XLIX. or suing out process of execution against the body of any person, shall deposit in Court, at the time of issue of the warrant, diet-money for one month of thirty days at such rate as the Collector may direct, not exceeding two annas per diem, unless the Collector for any special reason direct that deposit be made at a higher rate, which shall not exceed four annas per diem.

Payment of diet-money in advance during imprisonment.

XCVI. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, in failure of which the party confined shall be discharged.

Diet-money to be costs in suit.

XCVII. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit, and any diet-money not so spent shall be returned to the person who deposited the same.

List of property to be prepared and proclamation of sale to be published, &c.

XCVIII. In executing a writ of execution against the movable property of a debtor liable under this Act, the Officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation specifying the day upon which the sale is intended to be held together with a copy of the said list at the intended place of sale and at the residence of the debtor. A copy of the said proclamation and list shall be transmitted to the Collector and shall be affixed in his Office.

Custody and sale of movable property taken in execution.

XCIX. No sale of any movable property taken in execution shall be made until after the end of ten days next following the day on which such property may have been so taken. Until such sale the property shall be deposited in some fit place or it may remain in custody of some fit person approved by the Officer executing the writ. The provisions of Sections CXXIX. to CXXXIII. so far as the same are applicable, shall be applied to sales under this Section.

Collector may stay

C. If before the day fixed for the sale a third party appear before the Collector and claim a right or in-

Sale of movable property seized if a third party claim any interest therein.

terest in any of the movable property taken in execution, the Collector shall examine such party or his agent on oath or affirmation or otherwise, according to the law for the time being in force relative to the examination of witnesses, and if he see sufficient reason for so doing may stay the sale of such property.

Collector to adjudicate such claims.

CI. The Collector shall adjudicate upon such claim and make such order between the claimant and the plaintiff and defendant in the original suit as shall seem fit. In trying such claim the Collector shall be guided by the rules contained in this Act so far as they may be applicable.

Claimant failing to establish his right, liable to pay compensation to judgment creditor.

CII. If the claimant shall fail to establish his right to the property taken in execution, the Collector at the time of disposing of the case may award to the judgment-creditor against such claimant as part of the costs such sum as he may consider sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

No appeal from order of Collector under the two last preceding Sections.

Proviso.

CIII. No appeal shall lie from any order passed by the Collector under the two last preceding Sections. But the party against whom the same may be given shall be at liberty to bring a suit in the Civil Court to establish his right at any time within one year from the date of the order; provided that, if the order be for the sale of the property, the suit shall not be for the recovery of the property, but shall be for damages against the judgment-creditor by whom the property was brought to sale.

Sale not vitiated by irregularity in publishing or conducting the same.

Proviso.

CIV. No irregularity in publishing or conducting a sale of movable property under an execution shall vitiate such sale, but this rule shall not be held to deprive any person who may sustain damage by reason of such irregularity from recovering such damage by action in the Civil Court; provided such action be brought within one year from the date of sale.

Sale of transferable tenures in execution of decrees for arrears of rent.

CV. If the decree be for an arrear of rent due in respect of an under-tenure, which by the title-deeds or the custom of the country is transferable by sale, the judgment-creditor may make applica-

tion for the sale of the tenure, and the tenure, may thereupon be brought to sale in execution of the decree, according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force. But no such application shall be received when a warrant of execution has been previously issued against the person or movable property of the judgment-debtor, so long as such warrant remains in force. If after sale of an under-tenure any portion of the amount decreed remains due, process may be applied for against any other property, movable or immovable, belonging to the debtor, and any such immovable property may be brought to sale in the manner provided in Section CX. of this Act.

If third party claim to be the proprietor and lawful possessor of such under-tenure, Collector to stay the sale and to enquire into and adjudicate upon the claim.

CVI. If before the day fixed for the sale of any such under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of such under-tenure, a third party appear before the Collector, and allege that such third party and not the person against whom the decree has been obtained, is the proprietor of such under-tenure, and was in lawful possession of the same at the time when such decree was obtained, the Collector shall examine such party in the manner provided in Section C. for the examination of third parties, and if he see sufficient reason for so doing, and such party shall deposit in Court the amount of the decree or give sufficient security for the same, the Collector shall stay the sale and proceed to enquire into and adjudicate upon the claim. Provided that no transfer of an under-tenure which by the provisions of this Act or any other law for the time being in force is required to be registered in the Sherishteh of the Zemindar or superior tenant shall be recognized unless it have been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Collector.

Proviso.

Mode of adjudicating such claims.

CVII. In trying such claim the Collector shall be guided by the rules contained in this Act, so far as the same may be applicable and the judgment passed by the Collector on such claim shall not be subject to appeal, but the party against whom it is given may bring a suit in the Civil Court to establish his right at any time within one year from the date of the judgment.

CVIII. If a decree is given in favor of a sharer in a joint undivided estate, dependent talook, or other similar tenure for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate or talook or tenure, application for the sale of such under-tenure shall not be received unless execution shall have been first taken out against any movable property which the judgment-debtor may possess within the District in which the suit was instituted and the sale of such property, if any, shall have proved insufficient to satisfy the judgment. In such case such under-tenure, if of the nature described in Section CV. may be brought to sale in execution of the decree in the same manner as any other immovable property may be sold in execution of a decree for money under the provisions of the two next following Sections.

Execution of decrees given in favor of sharers in undivided estates or tenures.

CIX. In the execution of any decree for the payment of money under this Act not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or movable property of the debtor within the District in which the suit was instituted, the judgment-creditor may apply for execution against any immovable property belonging to such debtor.

In all cases of decrees for money, if judgment cannot be satisfied by sale of debtor's movable property, execution may be had against his immovable property.

CX. If the immovable property against which execution is applied for be a house or other building, process shall be issued in the same manner as for the attachment and sale of movable property, and the provisions of Sections XCVIII. and XCIX. shall be applicable to the execution of such process. If the property be a saleable under-tenure it shall be sold under the provisions of the law for the time being in force applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof. If the property be an estate or a share of an estate, it shall be sold under the rules in force for the sale of estates for the recovery of demands recoverable by the same process as arrears of land revenue.

Mode of executing process if immovable property be a house or other building.

If it be a saleable under-tenure.

If it be an estate or a share of an estate.

CXI. If, before the day fixed for the sale of any immov-

Consequence of objection being offered before the sale of any immovable property.

able property as aforesaid, objection shall be offered to the sale on the ground of such property not belonging to the judgment-debtor, and consequently not being liable to be sold in execution of a decree against him, the Collector shall examine the party making the objection in the manner prescribed in Section C. for the examination of third parties, and if satisfied that there is sufficient ground for so doing, shall stay the sale and proceed to enquire into and adjudicate upon the objection, in the same manner, and subject to the same right of suit by the party against whom judgment may be given, as is provided in Section CVII.

Produce of the land to be held hypothecated for the rent.

Arrears of rent may be recovered by distraint under the following rules.

CXII. The produce of the land is held to be hypothecated for the rent payable in respect thereof; and when an arrear of rent as defined in Section XX. of this Act, is due from any cultivator of land, the zemindar, lakerajdar, farmer, dependent talookdar, under-farmer, or other person entitled to receive rent immediately from such cultivator, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due under the following rules. Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given, shall not be liable to distraint. Provided also that no sharer, in a joint estate, dependent talook, or other tenure, in which a division of lands has not been made amongst the sharers shall exercise the power of distraint otherwise than through a manager authorized to collect the rents of the whole estate, talook, or tenure, on behalf of all the sharers in the same. Provided further that in putteedaree estates situated in districts under the Government of the Lieutenant-Governor of the North-Western Provinces distraint shall be made only through lumberdar.

Cultivators who have given security to be exempt from distraint.

No distraint in certain cases.

CXIII. Distraint shall not be made for any arrear which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable for the land in the preceding year unless

a written engagement for the payment of such excess has been executed by the cultivator.

CXIV. The power of distraint vested by Section CXII. in Zemindars and other persons entitled to receive rent from cultivators of land, may be exercised by managers under the Court of Wards, Surburakars, and Tehsildars of estates held under khas management, and other persons lawfully entrusted with the charge of landed property; and also by the naibs, gomashtahs, and other agents employed by any such persons as aforesaid in the collection of rent if expressly authorized by powor of attorney in that behalf. Provided that if any illegal act is committed by any such Naib, Gomashtah, or other agent under color of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

Power of distraint to be exercised by managers under the Court of Wards, &c.

Proviso.

CXV. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing floor or plaee for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act. But no such crops or products other than the produce of the land in respect of which an arrear of rent is due or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

Standing crops and crops gathered but not stored liable to distraint.

CXVI. Before or at the time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter, or if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

Defaulter to be served with a written demand, &c., before or at the time of distraint.

CXVII. Unless the amount of the demand is immediately

Distress to be proportionate to the arrear if not paid or tendered.

paid or tendered, the distrainer may distrain property as aforesaid of value proportionate to the amount of the arrear with costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or if he be absent affix it at his usual place of residence.

List of property to be distrained, to be served on owner.

Standing crops &c. when attached, to be reaped and stored by the cultivator, or if he neglect to do so, by the distrainer.

CXVIII. Standing crops and other ungathered products may notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries or other places as are commonly used by him for the purpose. If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood. In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose. Crops or products which from their nature do not admit of being stored, may be sold before they are cut or gathered, under the rules hereinafter provided; but in such case the distraint shall be made at least twenty days before the time when the crops or products or any part of the same would be fit for cutting or gathering.

Distrainer may apply for aid to the Collector upon occasion of resistance made or apprehended.

CXIX. If a distrainer shall be opposed, or shall apprehend resistance, and shall desire to obtain the assistance of a public Officer, he may apply to the Collector, and the Collector may, if he thinks necessary, depute an Officer to support the distrainer in making the distraint.

Person empowered to distrain may give written authority to their servants to do so.

CXX. When any person, empowered to distrain property under Section CXI. or Section CXII. shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority (which may be on plain paper) for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

CXXI. If at any time after property has been distrained

Distress to be withdrawn if defaulter tender payment of arrear and expenses of attachment prior to the day of sale.

and prior to the day fixed for its being put up to sale as hereinafter provided, the owner of the property shall tender payment of the arrear demanded of him and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Application for sale.

CXXII. Within five days from the time of the storing of any distrained crops or products, or if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same to the Civil Court Ameen, or other Officer authorized to sell property in satisfaction of decrees of the Civil Court within the circle in which the distrained property is situate or to such other public Officer as the local Government shall appoint for the purpose.

Form of application.

CXXIII. The application shall be in writing, and shall contain an inventory or description of the property distrained, the name of the defaulter and his place of residence, the amount due, and date of the distress, and the place in which the distrained property is deposited.

Cost of notice upon defaulter to be deposited by distrainer.

Together with the application, the distrainer shall deliver to the Civil Court Ameen or other Officer the amount necessary for the service of a notice upon the defaulter as hereinafter provided.

Procedure by Civil Court Ameen, &c. on receipt of application.

CXXIV. Immediately on receipt of the application the Civil Court Ameen or other Officer shall transmit a copy of it to the Collector; and shall serve a notice (which shall be in the form (G) contained in the Schedule to this Act, or to the like effect) on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice. He shall at the same time send to the Collector for the purpose of being put up in his Office, and if in the North-Western Provinces in the Cutcherry of the Tuhseeldar, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy

of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited. The proclamation shall contain a description of the property, the demand for which it is to be sold, and the place where the sale is to be held.

Ameen to suspend sale on receipt of Collector's certificate of the institution of a suit.

CXXV. If a suit shall be instituted before the Collector in pursuance of the aforesaid notice, the Collector shall transmit to the Civil Court Ameen or other Officer, or if so requested shall deliver to the owner of the distrained property, a certificate of the institution of such suit; and on such certificate being received by or presented to the Ameen or other Officer, he shall suspend proceedings in regard to the sale of the distrained property.

Suit to contest distrainer's demand before issue of notice of sale.

CXXVI. A person whose property has been distrained in the manner hereinbefore provided, may institute a suit to contest the demand of the distrainer immediately after the distraint of his property, and before the issue of notice of sale. When such suit is instituted, the Collector shall proceed in the manner prescribed in the last preceding Section. If thereafter application for the sale of the property is made to the Civil Court Ameen or other Officer, he shall transmit a copy of the application to the Collector, and suspend further proceedings pending the decision of the case.

Distress to be withdrawn on receipt of Collector's certificate that the owner has executed a bond with security to pay amount of decree with interest and costs.

CXXVII. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with security binding himself to pay whatever sum may be adjudged to be due from him with interest and costs of suit, and when such bond is executed the Collector shall give to the owner of the property a certificate to that effect, or if so requested shall serve the distrainer with notice of the same; and upon such certificate being presented to the distrainer by the owner of the property or served on him by order of the Collector the property shall be released from distraint.

CXXVIII. On the expiration of the period fixed in the

On expiration of period fixed in the proclamation of sale, if institution of suit to contest distrainer's demand have not been certified, sale may be proceeded with.

proclamation of sale, if the institution of a suit to contest the demand of the distrainer has not been certified to the Civil Court Ameen or other Officer in the manner hereinbefore provided, he shall, unless the said demand, with such costs of the distress as shall be allowed by him, be discharged in full, proceed to sell the property or such part of it as may be necessary in the manner following.

Place and manner of sale.

CXXIX. The sale shall be held at the place where the distrained property is deposited, or at the nearest gunge, bazar, haut, or other place of public resort, if the Civil Court Ameen or other Officer should be of opinion that it is likely to sell there to better advantage. The property shall be sold by public auction in one or more lots as the Officer holding the sale may think advisable, and if the demand with the costs of distress and sale be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

If fair price be not offered, sale may be postponed to another day, and shall be then completed at whatever price may be offered.

CXXX. If on the property being put up for sale a fair price in the estimation of the Officer holding the sale be not offered for it, and the owner of the property or some person authorized to act on his behalf apply to have the sale postponed until the next day, or the next market day if a market be held at the place of sale, the sale shall be postponed until such day and shall be then completed whatever price may be offered for the property.

Payment of purchase money.

CXXXI. The price of every lot shall be paid for in ready money at the time of sale or as soon after as the Officer holding the sale shall think necessary; and in default of such payment the property shall be put up again and sold. When the purchase money has been paid in full, the Officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale.

CXXXII. From the proceeds of the sale of distrained property the Officer holding the sale shall make a deduction at the rate of one anna in the Rupee on account of the costs of the sale, and shall transmit

the amount to the Collector in order that it may be credited to Government. He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress and of the issue of the notice and proclamation of sale prescribed in Section CXXIV. to such amount as, after examination of the statement of expenses furnished by the distrainer, he shall think proper to allow. The remainder shall be applied to the discharge of the arrear for which the distraint was made with interest thereon up to the day of sale, and if there be any overplus it shall be delivered to the person whose property shall have been sold.

Officers holding sales prohibited from purchasing.

CXXXIII. Officers holding sales of property under this Act, and all persons employed by or subordinate to such Officers, are prohibited from purchasing either directly or indirectly any property sold by such Officers.

All irregularities to be reported to the Collector.

CXXXIV. Civil Court Ameens and other Officers as aforesaid are required to bring to the notice of Collectors any material irregularities committed by distrainers under color of this Act and if in any case, on proceeding to hold a sale of property, the Civil Court Ameen or other Officer shall find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, and the Collector shall direct the issue of another notice and proclamation of sale under Section CXXIV. or pass such other order as he may think proper.

Officer not to proceed to sale, if he find that defaulter has not received due notice.

Recovery of expenses if Ameen proceeds to place of sale and no sale takes place.

CXXXV. When a Civil Court Ameen or other Officer has proceeded to any place for the purpose of holding a sale and no sale takes place either for the reason stated in the last preceding Section, or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to the Civil Court Ameen or other Officer, the charge of one anna in the Rupee on account of expenses shall be leviable and shall be calculated on the estimated value of the distrained property. If the demand of the distrainer be not satisfied until the day fixed for the sale, the charge for ex-

penses shall be paid by the owner of the property and may be recovered by the sale of such portion thereof as may be necessary. In every other case it shall be paid by the distrainer and may be recovered by attachment and sale of the property of the distrainer under the warrant of the Collector. Provided always that in no case shall a larger amount than ten Rupees be recoverable under this Section.

Proceedings of Civil Court Ameens, &c. subject to revision and orders of Collectors.

CXXXVI. All proceedings under this Act of the Civil Court Ameens and other Officers as aforesaid shall be subject to the revision and order of the Collectors, and the Collectors, with the sanction of the Boards of Revenue, may require the submission of such periodical reports and statements of business performed by the Civil Court Ameens and other Officers as may be thought necessary.

Second proclamation of sale.

CXXXVII. When a suit has been instituted to contest the demand of a distrainer and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Collector shall issue an order to the Civil Court Ameen or other Officer authorizing the sale of the property, and on the application of the distrainer, which shall be made within five days from the receipt of such order by the Civil Court Ameen or other Officer, such Ameen or Officer shall publish a second proclamation in the manner prescribed in Section CXXIV. fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation; and unless the amount adjudged to be due with the costs of distress be paid intermediately, shall proceed to sell the property in the manner hereinbefore provided.

Procedure after institution of suit to contest distrainer's demand.

CXXXVIII. In all suits instituted to contest the demand of distrainer, the distrainer shall be required to prove the arrear in the same manner as if he had himself brought suit for the amount under the foregoing provisions of this Act. If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favor of the distrainer, and the amount may be recovered by sale of the property as provided in the last preceding Section if the distress has not been withdrawn, and if any

balance remain due after such sale by execution of the decree against the person and any other property of the defaulter, or if the property have been released on security by execution of the decree against the person and property of the defaulter and of his surety. If on the other hand the distraint is adjudged to be vexatious or groundless, Collector, besides directing the release of the distrained property, may award such damages in favor of the plaintiff as the circumstances of the case shall seem to require.

Any person, whose property has been distrained for arrears of rent alleged to be due from another, may institute a suit against the distrainer, &c.

CXXXIX. If any person shall claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer and such other person, to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand. When any such suit is instituted the property may be released upon security being given for the value of the same. If the claim is dismissed the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer. If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may seem to require.

Proviso.

Provided always that no claim to any produce of land, liable to distraint under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.

Procedure if distrainer's right to distrain be disputed.

CXL. If in any case in which property has been distrained for an arrear of rent and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed by or on behalf of any person other than the distrainer on the ground of such other person being actually and in good faith in the receipt

and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such other person before and up to the time of the commencement of the suit shall be enquired into, and the suit shall be decided according to the result of such enquiry. Provided always that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

Persons prevented from suing in time to save their property from sale, may sue for damages.

CXLI. If any person, whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing suit to contest the demand or to try the right to the property as the case may be within the period allowed by Sections CXXIV. and CXXXIX. and his property is in consequence brought to sale, he may nevertheless institute a suit under this Act to recover damages for the illegal distress and sale of his property.

Also persons aggrieved by any illegal act of distrainer.

CXLII. If any person empowered to distrain property or employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act, or if any distrained property shall be lost, damaged, or destroyed by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof, or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the property may institute a suit under this Act to recover damages for any injury which he may have thereby sustained.

Unlawful distraint.

CXLIII. If any person not empowered to distrain property under Sections CXII. and CXIV. of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distrain or sell or cause to be sold any property under color of this Act, the owner of the property may institute a suit under this Act to recover damages from such person for any injury which he may have

sustained from the distraint or sale. The said person shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence in addition to any damages which may be awarded against him in such suit.

CXLIV. Provided always that any suit which may be instituted under any of the last three Sections shall be commenced within three months from the date of the occurrence of the cause of action.

Time for commencing suits for damages.

CXLV. If any person shall resist a distraint of property duly made under this Act, or shall forcibly or clandestinely remove any distrained property, the Collector upon complaint being made within fifteen days from the date of such resistance or removal, shall cause the person accused to be arrested, and if the offence be proved and the offender be the owner of the property, shall order him to be imprisoned in the Civil jail for six months, or until the whole arrear due to the distrainer with all expenses and costs shall sooner be paid or levied by distress and sale of the property of the offender under warrant of the Collector. If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred Rupees, or in default of payment thereof to imprisonment for a period not exceeding two months.

Resistance of distraint.

CXLVI. Every process issued by a Collector under this Act shall be under the seal and signature of the Collector, and shall be served or executed by the Nazir or by such other Officer as the Collector may direct at the cost of the party at whose instance it issued. The amount of such cost, and, in the case of summons to a witness, any sum required for the travelling expenses of such witness, shall be deposited in Court before the process is issued. Provided that if in any case the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Service of process.

CXLVII. Any resistance or opposition to the lawful process of a Collector under this Act may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of Civil

Resistance of process.

justice. When in any such case the offender is not present in Court, the Collector may summon him to answer to the charge, and if after due service of the summons he fail to attend, may issue a warrant for his apprehension. Orders passed by Collectors under this Section shall not be deemed to be orders relating to the trial of suits or to the execution of decrees within the meaning of Section CLI.

CXLVIII. It shall be competent to the Collector to hold a Court for hearing and determining suits under this Act in any place within the limits of his District or local jurisdiction, provided that every hearing and decision shall be in open Court, and that the parties to the suit or their authorized agents shall have had due notice to attend at such place.

Collector competent to hold a Court in any part of his jurisdiction.

Proviso.

CXLIX. Any person may practise as an agent or mookhtar in a Court held by a Collector under this Act without any formal licence from the Collector. But it shall be competent to the Collector to prohibit any person, who has been convicted by a competent Court of a criminal offence, or who has been found guilty of fraudulent or dishonest conduct in the discharge of his duty as agent or mookhtar, to practise as an agent or mookhtar in his Court. When any agent or mookhtar is charged by the Collector or any other person with fraudulent or dishonest conduct in the discharge of his duty, the Collector shall proceed in the manner prescribed in Section IV. Act XVIII. of 1852, or any other law for the time being in force for the trial of charges against pleaders.

Agents or mookhtars.

CL. All the powers vested in the Collector by the preceding Sections of this Act may be exercised by any Deputy Collector in cases referred to him by a Collector; and in all cases without such reference, by any Deputy Collector placed in charge of any Sub-division of a District; and all applications and reports allowed or required by this Act to be made to the Collector may be made to any Deputy Collector having such local jurisdiction.

Powers of Deputy Collectors.

CLI. In the performance of their duties under this Act the Collectors and Deputy Collectors shall be subject to the general direction and control of the

Collectors and Deputy Collectors to be subject to general di-

rection and control of the Commissioners and the Boards of Revenue.

Commissioners and the Boards of Revenue; and the Deputy Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate. All orders passed by a Collector under this Act, not being judgments in suits or orders passed in the course of suits and relating to the trial thereof or orders passed after decree and relating to the execution thereof, shall be appealablo to the Commissioner; and all such orders passed by a Deputy Collector shall be appealable to the Collector; but no judgment of a Collector or Deputy Collector in any suit, and no order of a Collector or Deputy Collector passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

No appeal from orders of Collectors and Deputy Collectors in certain cases.

CLII. Every appeal against the order of a Collector shall be presented to the Commissioner within thirty days, and every appeal against the order of a Deputy Collector shall be presented to the Collector within fifteen days from the date of the order. Orders passed in appeal by a Commissioner or a Collector shall not be open to any further appeal, but the Board of Revenue or the Commissioner may call for any case and pass such orders thereon as they may think proper.

Time for presenting appeals from orders.

CLIII. In the suits under Clauses 2, 4, and 7 of Section XXIII. and under Section XXIV. of this Act, tried and decided by a Collector, if the amount sued for or the value of the property claimed does not exceed one hundred Rupees, the judgment of the Collector shall be final, and not open to revision or appeal except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a ryot or tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in Sections CLX. and CLXI. of this Act.

No appeal from any decree of Collector for money below 100 Rupees unless the decision involve some question of right to enhance rent or some question relating to a title to land.

CLIV. In suits in which the judgment of the Collector is

In suits not open to appeal, Collector may grant a re-hearing upon the discovery of new evidence, &c.

final as provided in the last preceding Section, the Collector may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of, or could not produce at the time of trial.

Appeal from decision of Deputy Collector.

CLV. When any such suit as aforesaid, in which if tried and decided by a Collector the judgment of the Collector would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Collector.

Petition of appeal to be on stamp paper, &c.

CLVI. The petition of appeal shall be written on stamp paper of eight annas value and shall be presented to the Collector within fifteen days from the date of the decree, provided that such time as may be requisite for procuring a copy of the decree appealed against shall not be reckoned as part of the fifteen days.

Procedure in appeal.

CLVII. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons. If on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an agent, the appeal shall be dismissed for default. If the appellant shall appear and the respondent shall not appear in person or by an agent, the appeal shall be heard *ex parte.*

Re-admission of appeal.

CLVIII. If an appeal be dismissed for default of prosecution the appellant may within fifteen days from the date of the dismissal apply to the Collector for the re-admission of the appeal, and if it shall be proved to the satisfaction of the Collector that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal.

Judgment in appeal

CLIX. After hearing the appeal the Collector shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final.

CLX. In all suits other than those in which when tried and

In what suits appeal to lie to Zillah Judge.

decided by a Collector the judgment of the Collector is declared to be final or when tried and decided by a Deputy Collector an appeal is allowed to the Collector, an appeal from the judgment of the Collector or Deputy Collector shall lie to the Zillah Judge; unless the amount or value in dispute exceed five thousand Rupees, in which case the appeal shall lie to the Sudder Court.

To Sudder Court.

Rules regarding presentation and hearing of appeals.

CLXI. The petition of appeal shall be written on the stamp paper prescribed for appeals from the subordinate Civil Courts with reference to the amount or value of the property involved in the appeal, and the rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the Zillah Judge or Sudder Court under this Act.

Suits to be preferred in the Revenue Office of the District or Sub-division in which the greater part of the land is situate.

CLXII. Suits under this Act shall be preferred in the Revenue Office of the District, or when a Sub-division of a District has been placed under the jurisdiction of a Deputy Collector, in the Revenue Office of the Sub-division in which the cause of action shall have arisen. Provided always that the Collector may withdraw any suit from any Deputy Collector and try it himself, or refer it to another Deputy Collector. If the lands comprised in any talook, farm, or other tenure, or any lands held under one lease or engagement or at one entire rent in respect of which arrears of rent may be due, are situated in more than one District or Sub-division, the District or Sub-division in which the greater part of such lands is situate shall be held to be the District or Sub-division in which the cause of action has arisen; and if any question shall be raised respecting the District or Sub-division in which the greater part of the lands is situate, the Board of Revenue, or if all the lands be situate in one District the Collector of the District shall decide the question, and such decision shall be conclusive on the point of jurisdiction.

CLXIII. Except as provided in the last preceding Section,

Except as above, Collector not to exercise jurisdiction in respect to lands situate beyond his District.

no Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the District to which he is appointed, by reason of such lands forming part of an estate the revenue of which is paid into the Treasury of the said District.

Deputy Collector entrusted with Police functions, not to exercise judicial powers under this Act.

CLXIV. No Deputy Collector appointed under Regulation IX. of 1833 of the Bengal Code, shall exercise any judicial powers or other jurisdiction under this Act if entrusted with any Police functions.

What powers to be exercised by Assistants to Collectors.

CLXV. Assistants to Collectors shall not exercise any powers under this Act unless invested by Government with the powers of Deputy Collectors, in which case they may exercise the powers hereby assigned to Deputy Collectors.

Saving of rights of proprietors in respect of Putnee Talooks, &c. under Regulation VIII. 1819.

CLXVI. Nothing contained in this Act shall be held to affect the right vested in proprietors of land under direct engagements with Government, of bringing to sale for arrears of rent Putnee Talooks and other similar tenures under the provisions of Regulation VIII. 1819.

Commencement of Act.

CLXVII. This Act shall commence and have effect from and after the 1st day of August 1859.

"Civil Jail."

"Nazir."

Number.

Gender.

CLXVIII. The words "Civil Jail" as used in this Act shall include the Civil Jail of the Zillah and any place appointed by the Executive Government for the confinement of prisoners by any Court constituted under this Act. The word "Nazir" shall include any Officer of a Court authorized to serve or execute its process. Unless there be something in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females.

SCHEDULE.

A.

FORM OF SUMMONS TO DEFENDANT.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

[*Name, description, and address of Plaintiff.*]

C. D., Defendant.

[*Name, description, and address of Defendant.*]

Whereas the said A. B. has brought a claim against you in this Court for (*here specify particulars of claim as given in the statement,) you are hereby required to appear in person in this Court on the day of* [*if not specially required to appear in person, state, in person or by an agent who has personal knowledge of the subject or who shall be accompanied by a person who has such knowledge*] to answer the abovenamed plaintiff, and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

B.

FORM OF WARRANT OF ARREST.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector of——

Whereas the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 185

C.

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B , Plaintiff.

[*Name, description, and address of Plaintiff.*]

C. D., Defendant,

[*Name, description, and address of Defendant.*]

Whereas the said A. B. has brought a claim against you in this Court for *(here specify particulars of claim as given in the statement)* and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

D.

FORM OF SECURITY BOND FOR APPEARANCE OF DEFENDANT.

Whereas A. B. plaintiff has instituted a suit in the Court of the Collector of against C. D. defendant, and the said C. D. has been required to give security for his appearance at any time when called on while the suit is depending and until execution of the decree, I. E. F., hereby declare myself surety for the said C. D.'s appearance as aforesaid, and in case of his making default in such appearance I engage to pay any sum for the payment of which the said C. D. may be liable under the decree. [*If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.*]

E.

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector of——

Whereas the said C. D. was directed by a decree of this Court, under date the day of 185 , to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to apprehend the said C. D., and to bring him with all

convenient speed before this Court to be dealt with according to law.

F.

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B. Plaintiff.
C. D. Defendant.

To the Nazir of the Court of the Collector of —

Whereas C. D. was directed by a decree of this Court, under date the day of 185 to pay to A. B. the sum of , and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such movable property of the said C. D. as (is described in the list annexed, and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said C. D., on some convenient day not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

G.

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of Commissioner for sale of distrained property.

A. B., Distrainer.

[*Name, description, and address of the owner of the property.*]

Whereas the said A. B. has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said A. B., or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 185

BENGAL.--ZEMINDARY REVENUE SALE LAW.

ACT No. XI. OF 1859.

[*Passed on the 4th March,* 1859.

Recites the objects of the Act.

1. Repeals Regulation 10, 1818, and Act I. 1845.

2. Any kist of one month remaining unpaid on the 1st of the following month, to be considered an arrear of revenue.

3. Board of Revenue to fix dates at which arrears shall be paid up, in default of which estates shall be sold to highest bidder. Board to give notice of days fixed for payment.

4. In Sylhet, Collector may be authorized to proceed first by distress and sale of personal property of defaulters.

5. No estate to be sold for arrears of specified kinds until after notification in the district, &c. of specified particulars.

6. Sale officer after expiration of last day for payment, to advertize estates in arrear by specified notification in his own office, &c. and sale shall take place accordingly, except as specified.

7. After notification of an estate for sale, proclamation to be made to ryots and renters not to pay their rents to defaulting proprietor.

8. Sale not to be barred or rendered void by alleged cross claim of defaulter against government, unless claim be admitted, &c.

9. Collector may up to sunset of last day of payment, receive from any person not being the defaulting proprietor a deposit of the arrear, for protection of his own interest, &c.

10, 11. Recorded sharer of joint estate may apply for leave to pay his share of the revenue separately; which application the Collector shall publish, &c. and if not objected to by other recorded shares, application to be granted; and (11) the same application may be made if his share consists of a specific portion of the land of the estate.

12. If the application is objected to on specified grounds by any other recorded sharer, the Collector shall refer the parties to the Civil Court.

13, 14. After separate account of Revenue is opened for shares, only those shares to be put up for sale, which are in arrear; but the several shares still to constitute one integral estate; and (14) if the shares put up do not sell for the amount in arrear, the sale is to be stopt, and the whole estate be sold by auction, unless within 10 days the other sharers pay the arrear and so become the purchasers.

15, 16. Recorded proprietor or co-partner may deposit Government securities for arrear, and Collector may realize the securities, and such deposit shall exempt the estate from sale; but (16) person making deposit may withdraw it, or revoke the pledge at any time.

17, 18. Exempts specified estates from sale law: e. g. estates under Court of Wards, estates of minors notified to Court of Wards, and estates held

under attachment by Revenue Officer, &c.; and (18) Collector may exempt any estate in arrear from sale at any time before sale has commenced; and Board of Revenue may exempt in like manner.

19, 20. Sales shall ordinarily be made in land Revenue Office at Sudder Station; but (20) if from sickness, occurrence of a holiday, &c. sale cannot be made on day fixed, sale officer may adjourn it giving specified notice.

21. Estates to be put up in the order in which they stand in the sale register.

22, 23, 24. Purchaser to deposit 25 per cent. on the price in cash or specified securities; and (23) the full amount shall be made good on or before the 30th day from the sale, and in default the deposit shall be forfeited, and if loss occur on re-sale, first purchaser to be liable for it as an arrear of Revenue; such re-sale (24) to be notified, but not until specified time, and re-sale to be under same rules in other respects as first sale.

25, 26. Appeal may be made to the Commissioner against any sale within 15 days, and he may annul the sale for irregularity, &c. ordering compensation in specified cases; and (26) Commissioner may on ground of hardship or injustice suspend his own proceedings on an appeal, and represent the case to the Board of Revenue, who if they see cause to annul the sale may represent it to the local government, &c.

27—30. Sales not appealed against within the allowed time and sales confirmed on appeal to be final and conclusive, and (28) thereupon the Sale officer shall deliver certificate of title to the purchaser and certify the change of proprietor; and (29) shall order possession to be given; and (30) thenceforward the certified proprietor shall be answerable for the government revenue.

31. Proceeds of sale to be applied in payment (1) of arrears of revenue, (2) of registered claims against estate, (3) residue to be distributed among recorded proprietors, or (4) held for creditor proceeding in Civil Court.

32. In case of annulment of sale, deposit to be returned to purchaser, with interest.

33. No sale to be annulled except on ground of its having been made contrary to provisions of this Act and of substantial injury by reason of the irregularity; nor unless suit be instituted within a year, nor by any person who has received any of the purchase money: but sufferer may sue for damages.

34. Party obtaining decree of Civil Court for annulment of sale, must apply for execution within six months afterwards, and decree-holder must repay purchase money within six months after that, or lose benefit of the annulment of the sale.

35. In the event of the annulment of sale, &c. purchase money to be refunded with interest, &c.

36. No suit to lie against certified purchaser as benami purchaser for another.

37. Auction purchaser to acquire an estate free from all incumbrances and all under-tenures except four classes specified.

38, 39. Establishes rules for the registration of talookdaree and other similar tenures created since the time of settlement: and (39) there shall be two sets of registers, a common register and a special register, the former to secure the specified tenures against any purchaser at revenue sale except the Government, the latter against the Government also.

40. Application for registry of tenure must be to Collector, must state the kind of registry desired, and specify particulars respecting the property.

41. If the application is for common registry, the Collector shall serve notice in specified manner on recorded proprietors, and shall register the tenure if no objection made within 30 days, and if probable ground of objection be shown shall refer the parties to the Civil Court.

42. If application is for special registry, Collector shall besides giving the said notice to recorded proprietor make inquiry in regard to the security of the revenue, and if satisfied on that point shall report to the Commissioner, on whose confirmation the tenure shall be specially registered in case no probable ground of objection is made by proprietor or, in that case parties are to be referred to Civil Court.

43. Admits to privilege of being registered leases of lands, &c. whereon dwelling houses, &c. have been erected, at option of the lease-holders.

44. Admits to privilege of being specially registered only, the first and second classes of tenures specified in s. 37; and prescribes the form of application for registration: but registration not to be necessary for protection of such tenures.

45. Application for registration of existing tenures must be made within three years after passing of this Act, and of tenures hereafter created within three months after creation of the tenure.

46. Actual expenses of survey, &c., incurred on application for special registry to be borne by applicant and prepaid if so required.

47. No Civil Court shall have power to order the revenue authorities to specially register any tenure.

48. Person deeming himself wronged by registration of tenure, may bring suit for cancelment of register.

49. Subordinate revenue authorities to proceed in the registration according to general instructions from revenue authorities; and orders of Commissioner for special registry shall be open to revision for the year.

50. Special registration of a tenure shall protect the tenure except against decree in civil suit to avoid it for fraud and as injurious to Government; and to be valid notwithstanding such decree in hands of *bonâ fide* holder of tenure for conditions specified.

51. Farms for terms of years, &c of the third excepted class for the special registration of which application has been made, shall be protected against intermediate sale of parent estate, subject to final decision of application.

52. Purchaser of an estate sold for arrears of revenue, in a district not permanently settled, to acquire the estate free from all incumbrances and all undertenures, &c. created since the time of settlement, save and except

leases of lands whereon dwelling houses, &c. have been erected: but purchaser shall not have power to enhance rents merely by reason of the annulment of the undertenures, &c.

53, 54. Recorded or unrecorded proprietors (except those who have separate shares under butwarrah or under this Act) becoming purchasers at revenue sale, shall acquire an estate only subject to all incumbrances, &c. (54) purchasers of shares sold under ss. 13 or 14 shall acquire such shares subject to all incumbrances, &c.

55. Purchaser may recover arrears due before the sale by any available process except distraint.

56, 57. Sale Officer may punish contempts committed in open Cutcherry by fine, &c. subject to appeal to Commissioner; and (57) default to make a bid by payment of deposit shall be a contempt.

58. If there be no bid, the Collector may purchase the estate for one rupee for Government, or if bid be less than the arrears the Collector may take the estate for Government.

59. Authorizes the Collector to take fees not exceeding the rates in Schedule B. and such fees to be prepaid.

60. Provisions of R. 7, 1822 and R. 9, 1825 to apply to surveys made under this Act, &c.

61. Interprets word Collector to include Deputy Collector, &c.

62. Act to be confined to Regulation parts of Lower Bengal.

Schedules A. and B. (fees).

An Act to improve the law relating to sales of Land for arrears of Revenue in the Lower Provinces under the Bengal Presidency.

Preamble.

Whereas it is expedient to discontinue the practice of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of revenue, or other demands of Government, in the Province of Cuttack: and whereas it is just that a person having lien upon an estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured; and whereas it is expedient to afford sharers in estates, who duly pay their shares of the Sudder Jumma of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers; and whereas it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents: and whereas it is expedient to provide for the voluntary registration of dependent talooks existing at the time of settlement; and whereas it is

expedient to protect the holders of registered under-tenures created since the settlement, and not resumable by the grantors or their representatives, from loss by the avoidance of their tenures on the occasion of a sale of the superior estate for arrears of public revenue, when the arrears can be realized by such sale: and to give absolute security to such tenures by special registry, when shown to be held at rent sufficient for the security of the revenue: and it is therefore proper, for the above and other purposes, to improve the law relating to sales of land for arrears of revenue in the Provinces of Bengal, Behar, and Orissa: It is enacted as follows:

Laws repealed.

I. Regulation X. 1818 *(relating to collection of the public revenue from proprietors and farmers of land in the District of Cuttack &c.)* is hereby repealed; and from the date of the passing of this law, Act I. of 1845 *(regarding sales of land for arrears of Revenue)*, except in so far as it repeals other laws, and except in regard to sales made or advertised, to arrears and other demands realizable, and to suits commenced and acts done, under authority thereof—shall cease to have effect in the Lower Provinces of Bengal.

What is an arrear of revenue.

II. If the whole or a portion of a kist or instalment of any month of the era, according to which the settlement and kistbundee of any mehal have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

Latest day of payment.

III. Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which by the Regulations and Acts in force are directed to be realized in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder. And the said Board shall give notice of the dates so fixed in the official Gazette, and shall direct corresponding publication to be made as far as regards each district in the language of that district, in the office of the Collector or other

officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate, (or Joint Magistrate, as the case may be,) and Moonsiffs, and at every Thannah station of that district; and the dates so fixed shall not be changed except by the said Board by advertisement and notification, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

In Sylhet, personal property liable to distress and sale.

IV. Provided that in the district of Sylhet, the Collector may be authorized by the Board of Revenue to proceed in the first instance by the distress and sale of the personal property of defaulters, instead of by the sale of their estates.

Proviso in the case of certain descriptions of arrear.

V. Provided always that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment, according to Section III. of this Act, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Moonsiff's Court and Police Thannah of the division in which the estate or share of an estate to which the notification relates, is situated; or if the estate or share of an estate be situated within the jurisdiction of more than one Moonsiff's Court or Police Thannah, in some one or more of such Courts or Thannahs; and also at the Cutcherry of the malgoozar or owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose.

First.—Arrears other than those of the current year, or of the year immediately preceding.

Secondly.—Arrears due on account of estates other than that to be sold.

Thirdly.—Arrears of estates under attachment by order of any

judicial authority, or managed by the Collector in accordance with such order.

Fourthly.—Arrears due on account of tuccavee, poolbundee, or other demands not being land revenue, but recoverable by the same process as arrears of land revenue.

Notifications of sale to be issued, and no tender after latest day of payment to stop the sale.

VI. The Collector or other Officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in Section III. of this Act, issue notifications in the language of the district, to be affixed in his own Office and in the Court of the Judge of the district, specifying the estates or shares of estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than fifteen or more than thirty clear days from the date of affixing the notification in the Office of the Collector or other officer as aforesaid. And if the Government revenue of any estate or share of an estate to be sold, exceed the sum of five hundred Rupees, a notification of the sale of such estate or share of an estate shall be published in the official Gazette. Except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following be put up to public auction by and in the presence of the Collector or other officer as aforesaid, and shall be sold to the highest bidder. And no payment, or tender of payment, made after sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

Notice to ryots, &c.

VII. Whenever an estate or share of an estate is notified for sale as provided by Section VI. of this Act, the Collector or other officer as aforesaid shall affix a proclamation in the language of the district in his own Office, and as soon thereafter as may be in the Moonsiff's Courts and Police Thânnahs within which the estate or share of an estate, or any part of it, is situated, and also at the Cutcherry of the malgoozar or the owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate forbidding the ryots and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed

for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

Claims against Government held by a defaulter not to invalidate a sale.

VIII. No claim to abatement or remission of revenue unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever held or supposed to be held by any defaulter against Government, shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hands, bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in Section XV. of this Act, the Collector shall have neglected, or refused on insufficient grounds, to transfer it on payment of arrear of revenue due.

Deposits receivable from persons not proprietors.

IX. The Collector or other Officer as aforesaid shall, at any time before sunset of the latest day of payment determined according to Section III. of this Act, receive as a deposit from any person not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate. And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of justice for the possession of the estate or share from which the arrear is due, or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share, or part thereof, subject to the rules in force for taking security in the cases of parties in Civil suits. And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine,

from the defaulting proprietor. And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate, or share, or part thereof, the amount so credited shall be added to the amount of the original lien.

Separation of shares held in common.

X. When a recorded sharer of a joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the share held in the estate by the applicant. The Collector shall then cause to be published in his own Office in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Moonsiffs, and in the Police Thannahs in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

Separation of shares consisting of specific portions of land.

XI. When a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of sudder jumma heretofore paid on account of it. On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding Section. In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit

separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

If objection be made, parties to be referred to the Civil Court.

XII. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate, that the amount of sudder jumma stated by the applicant to have been heretofore paid on account of such portion of land is not the amount which has been recognized by the other sharers as the jumma thereof, the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

Sale of separate shares.

XIII. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due, shall be given in the advertisement of sale prescribed in Section VI. of this Act. The share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jumma assigned thereto.

Entire estate may be sold under certain conditions.

XIV. If in any case of a sale held according to the provisions of the last preceding Section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government

the whole arrear due from such share. If such purchase be completed, the Collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in Sections XXVIII. and XXIX. of this Act, to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in Section VI. of this Act.

Deposit for the protection of an estate from sale.

XV. If any recorded proprietor or co-partner of an estate shall deposit with the Collector money, or Government securities endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the jumma of the entire estate, and authorizing the Collector to apply to the payment of any arrear of revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under Section III. of this Act, the Collector shall apply to the payment of such arrear the said money or securities, or such part thereof or of any interest due on the said securities as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain. And so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of revenue. All monies and securities so deposited shall be exempt from attachment, otherwise than in execution of a decree of a Civil Court.

Withdrawal of the deposit.

XVI. It shall be competent to the person making a deposit under the provision of the last preceding Section, or his representative or assignee, at any time to withdraw the deposit, and to revoke the pledge of the same.

XVII. No estate shall be liable to sale for the recovery of

Estates under Court of Wards or attachment.

arrears which have accrued during the period of its being under the management of the Court of Wards; and no estate the sole property of a minor or minors, and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI. 1822, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of eighteen years. And no estate held under attachment by the revenue authorities otherwise than by order of a judicial authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment or managed by a Revenue Officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment, or management until after the end of the year in which such arrears accrued.

Estates may be specially exempted from sale.

XVIII. It shall be competent to the Collector, or other officer as aforesaid, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption. Provided, however, and it is hereby enacted, that the Collector or other officer as aforesaid, or the Commissioner shall duly record in a proceeding the reason for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption.

Proviso.

Sales where to be made.

XIX. Sales shall ordinarily be made by the Collector or other officer as aforesaid in the land revenue office at the Sudder Station of the District: pro-

vided, however, that it shall be competent to the Board of Revenue to prescribe a place for holding sales other than such office, whenever they shall consider it beneficial to the parties concerned.

XX. In case the Collector or other officer as aforesaid shall be unable from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid; or if, having commenced it he be unable, from any cause, to complete it; he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his cutcherry; and so on, from day to day, until he shall be able to commence upon, or to complete the sale; but, with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

Adjournment of sales.

XXI. On the day of sale fixed according to Section VI. of this Act, sales shall proceed in regular order; the estate to be sold bearing the lowest number on the towjee or register in use in the Collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in Section XXII. of this Act.

Order of selling.

XXII. The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid, shall be required to deposit immediately or as soon after the conclusion of the sale of the estate or share as the Collector or other officer as aforesaid may think necessary, either in cash, Bank of Bengal Notes or Post Bills, or Government Securities to be valued at the market rate of the day, duly endorsed, twenty-five per cent. on the amount of his bid; and in default of such deposit, the estate or share shall forthwith be put up again and sold.

Deposit on account of purchase money.

XXIII. The full amount of purchase money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of

Full payment of purchase money.

the estate or share of an estate bought by him took place, reckoning that day as one of the thirty ; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth : and in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be resold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold. And in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase money and shall be dealt with in the manner hereinafter prescribed for the disposal thereof.

Re-sale.

XXIV. When default is made in the payment of purchase money a notification of the intended re-sale shall be published for the period and in the manner prescribed in Section VI. of this Act, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred and if the payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding Section shall be applicable to every such re-sale. Provided that, if default of payment of purchase money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually cosummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized.

Appeals.

XXV. It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act, if preferred to him on or before the fifteenth day from the date of sale, reckoning as in Section XXIII. or if preferred to the Collector or other Officer as afore-

said for transmission to the Commissioner, on or before the tenth day from the day of sale, and not otherwise; and the Commissioner shall be competent in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act, which shall appear to him not to have been conducted according to the provisions of this Act, awarding at the same time to the purchaser a payment from the proprietor of any moderate compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed the interest at the highest rate of the current Government Securities, on the amount of deposit or balance of purchase money during the period of its being retained in the Collector's office; and the order of the Commissioner shall in such cases be final.

Annulment of sale in special cases.

XXVI. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any cases of appeal from a sale, and to represent the case to the Board of Revenue, who, if they see cause, may recommend to the local Government to annul the sale; and the local Government in any such case may annul the sale and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

Sales when final.

XXVII. All sales of which the purchase money has been paid up as prescribed in Section XXIII. of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale as the first of the said thirty days. And sales against which an appeal may have been preferred, and dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal, if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided.

Certificate of sales.

XXVIII. Immediately upon a sale becoming final and conclusive, the Collector or other Officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A. annexed to this Act. And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being

vested in the person or persons named from the date specified; and the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the Moonsiffs and Police Thannahs within whose jurisdictions any part of the estate or share sold shall be situated.

Delivery of possession.

XXIX. The Collector or other officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum or in such other mode as may be customary, at some convenient place or places; and by affixing a copy of the certificate at the Malcutcherry or in some conspicuous place of the estate or share of an estate purchased.

Liability of purchaser.

XXX. The party certified as the proprietor of an estate or share of an estate by purchase under this Act, shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid.

Application of purchase money.

XXXI. The Collector shall apply the purchase money first to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and secondly to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the District; holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate sold or their heirs or representatives to be paid to his or their receipt on demand in the manner following: to wit, in shares proportioned to their recorded interest in the state or share of an estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt. And if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

Notification of annulment of sale.

XXXII. The annulment by a Commissioner or by Government of a sale made under this Act shall be publicly notified by the Collector or other officer as aforesaid, in the same manner as the becoming final and

conclusive of sales is required to be notified by Section XXVII. of this Act; and the amount of deposit and balance of purchase money shall be forthwith returned to the purchaser with interest thereon at the highest rates of the current public securities; which shall be paid by the Government, unless the proprietor shall have become liable for the same under the provisions of Section XXV. or Section XXVI. of this Act.

Jurisdiction of Civil Courts in suits to amend sales.

XXXIII. No sale for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under Section XXV. of this Act: and no suit to annul a sale made under this Act shall be received by any Court of Justice unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in Section XXVII. of this Act: and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase money. Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

Proviso.

Effects of annulment by decree of Court of sales under this Act.

XXXIV. If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof; otherwise the party in whose favor such decree was passed shall lose all benefit therefrom. And no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of current Government Securities. And if such party shall neg-

lect to pay any amount so recoverable, within six months from the date of such final decree, he shall lose all benefit therefrom.

If sale annulled, purchase money to be refunded.

XXXV. In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.

No suits on the ground of benamee purchase.

XXXVI. Any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Rights of a purchaser of a permanently settled estate sold for its own arrears.

XXXVII. The purchaser of an entire estate in the permanently settled Districts of Bengal, Behar, and Orissa, sold under this Act for the recovery of arrears due on account of the same shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement: and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants, with the following exceptions:

First. Istemraree or mokuraree tenures which have been held at a fixed rent from the time of the permanent settlement.

Secondly, Tenures existing at the time of settlement, which have not been held at a fixed rent. Provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly. Talookdaree and other similar tenures created since the time of settlement, and held immediately of the proprietors of estates; and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

Fourthly. Leases of lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise.

Proviso.

Provided always, that nothing in this Section contained shall be construed to entitle any such purchaser as aforesaid to eject any ryot, having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

Registration of talookdaree tenures created after settlement and held for terms of years.

XXXVIII. The following rules for the registration of talookdaree and other similar tenures created since the time of settlement, and held immediately of the proprietors of estates and of farms for terms of years so held, shall be observed.

Common and special registry.

XXXIX. There shall be two sets of registers, one for common registry and one for special registry. Common registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue except the Government. Special registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue including the Government.

Application for registry.

XL. The holder of any talookdaree or other similar tenure, such as is described in Section XXXVIII. of this Act, desirous of registering it, shall apply by petition to the Collector of the District to which the estate belongs. The application shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable.

1. The Pergunnah or Pergunnahs in which the tenure is situated.

2. The nature of the tenure.

3. The name or names of the village or villages whereof the land is composed, or wherein it is situated.

4. The area of the land comprised in the tenure, with its boundaries in complete detail.

5. The amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it.

6. The date of the deed constituting the tenure, or the date when the tenure was created.

7. The name of the proprietor who created the tenure.

8. The name of the original holder of the tenure.

9. The name of the present possessor, and if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in the said Section may apply in like manner for registry of the same. The application shall contain such of the foregoing particulars as are applicable to farms.

Procedure on application for common registry.

XLI. When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice, with a copy of the application annexed, to be affixed in his office, and at the mal-cutcherry of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application. If within the limited time no objection is made, the Collector shall register the tenure or farm. If within the limited time an objection is made by any recorded proprietor, or by any party interested not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has proba-

ble ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court, otherwise he shall grant the application. If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

Procedure on application for special registry.

XLII. When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding Section. If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue, to be made; and if he is satisfied that the Government revenue of the present state is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application. Otherwise the application shall be rejected. If within the limited time any recorded proprietor or any party interested not being a proprietor object to the registry, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court, otherwise he shall proceed as if no objection had been made. If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

Registration of leases of certain lands.

XLIII. Leases of lands of the description specified in the fourth exceptional class in Section XXXVII. may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of Talookdaree and other similar tenures.

Registration of old tenures.

XLIV. Tenures of the first and second exceptional classes in Section XXXVII. may be registered, at the option of the holders; and when so registered shall be entered only in the special register. Application for such registry shall contain the particulars specified in Section XL. so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in Section XLI. If within the limited time no objection is made by any recorded proprietor

or by any party interested not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy him as to the validity of the tenure; and if the result be to satisfy him that the tenure is valid, he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register. Otherwise the application for registry shall be rejected. If within the limited time any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and refer the parties to the Civil Court, otherwise he shall proceed as if no objection had been made. If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time. Provided always that nothing contained in this Section shall be understood as rendering registration necessary for the protection of *bonâ fide* tenures of the description herein referred to.

Proviso.

XLV. Application for registry of existing tenures and farms must be made within three years after the passing of this Act. Application for the registry of tenures created after the passing of this Act must be made within three months from the date of the deed constituting the tenure.

Time for application for registry of tenures and farms.

XLVI. The actual expenses of any measurement, survey, or local enquiry made under Sections XLII. and XLIV. of this Act, shall be borne by the party who applies for the registry of his tenure or farm; and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary.

Expenses of measurement, survey, or local enquiry.

XLVII. No Civil Court shall be competent to order the Revenue Authorities to enter any tenure or farm in the special register. Provided always that the refusal of the Revenue Authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be.

Civil Court not competent to order entry in the special register.

XLVIII. Subject to the general law of limitation, any per-

Suit for the cancelment of the registry of a tenure or farm.

son thinking himself wronged by the registry of a tenure or farm, may file a suit for the cancelment of the same.

XLIX. In the execution of their functions in the registration of tenures and farms under this Act, all subordinate Revenue Authorities shall proceed in accordance with the general instructions which they may receive from the superior Revenue Authorities to whom they are subordinate, and from the local Government; and all orders passed under the Sections aforesaid shall be open to appeal in usual course. The order of a Commissioner for the special registry of a tenure under the provisions of this Act, shall be open at any time within one year from the date of registry to revision by the Board of Revenue, or the local Government, on the ground of the Government Revenue not having been sufficiently secured or of the invalidity of the tenure, as the case may be.

Proceedings of Revenue Authorities in the registration of tenures, &c.

L. Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue. Provided that a tenure or farm in the hands of a *bona fide* purchaser for value shall not be avoided by reason of such fraud. But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector.

Effect of entry in the special register.

LI. Tenures and farms of the third exceptional class described in Section XXXVII. of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in Section XLII. shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the Revenue Authorities, upon such application, be in favor of the claimant.

Protection of talookdaree tenures pending enquiry, in case of sale of parent estate for arrears of revenue.

LII. The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except leases of lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing contained in this Section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the pergunnah, mouzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

Rights of a purchaser of an estate not permanently settled sold for its own arrears.

LIII. Excepting shares in estates under butwarrah who may have saved their shares from sale under Sections XXXIII. and XXXIV. Regulation XIX., 1814, and sharers whom the Collector, under Sections X. and XI. of this Act, has opened separate accounts; any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner; or

Rights of a purchaser being a sharer in any estate.

who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or ryots, which were not possessed by the previous proprietor at the time of the sale of the said estate.

And of a purchaser of an estate not sold for its own arrears.

LIV. When a share or shares of an estate may be sold under the provisions of Section XIII. or Section XIV. the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

Rights of purchasers of shares of estate.

LV. Arrears of rent which on the latest day of payment may be due to the defaulter from his under-tenants or ryots, shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day,

Recovery of arrears due to defaulters.

LVI. Any Collector or other Officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open cutcherry or office for the time being, by fine, to an extent not exceeding two hundred Rupees, commutable, if not paid, to imprisonment in the Civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector or other officer as aforesaid, shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall lie to the Revenue Commissioner, whose decision shall be final.

Punishment for contempt.

LVII. A default to make good a bid by making the deposit required by Section XXII. of this Act, shall be held to be a contempt.

Default in making deposit to be considered a contempt.

LVIII. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other

Government may purchase at a sale.

officer as aforesaid may purchase the estate on account of the Government for one Rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other officer as aforesaid may take or purchase the estate on account of the Government at the highest amount bid; in both which cases the Government shall acquire the property subject to the provisions of this Act.

Fees and charges demandable by Collector.

LIX. The Collector on the part of the Government shall be entitled to demand from applicants under Sections X. and XI. Sections XV. and XVI. and Sections XL. XLIII. and XLIV. of this Act, fees not exceeding the rates specified in Schedule B. to this Act annexed, which Schedule shall be taken as part of this Act; and applications under the said Sections shall not be received unless the said fees are tendered therewith.

Regulations VII. 1822 and IX. 1825 to be in force in certain estates.

LX. The provisions of Regulation VII. 1822 and Regulation IX. 1825 shall be in force in every estate in any part of which a measurement, survey, or local enquiry may be made under this Act; and in every estate purchased or taken on account of Government under this Act.

Interpretation.

LXI. In the construction of this Act, the word "Collector" shall include a Deputy Collector, or other officer exercising by the authority of Government the powers of a Collector or Deputy Collector.

Application and commencement of this Act.

LXII. The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal as are or shall be subject to the general regulations of that Presidency.

SCHEDULE A.

I certify that A. B. has purchased under Act No. XI. of 1859 the mehal *(or share of a mehal)* specified below, standing in the towjee of the district of , and that his purchase took effect on the day of *(being the day after that fixed for last day of payment.)*

(signed) D. E.
Collector.

SPECIFICATION.

(if of an entire Mehal.)

Towjee number

Name of Mehal

Name of the former proprietor

Sudder Jumma

(if of a share of a Mehal.)

Towjee number of the entire Mehal.

Name of the entire Mehal

Sudder Jumma of the entire Mehal

Description of the share sold

Subordinate Towjee number of the share sold

Name of the former proprietor of the share sold

Sudder Jumma for which the share sold is separately liable.

SCHEDULE B.

FEES.

For filing an application under Section X. or Section XI. for opening a separate account for a share of an entire estate.

If the annual jumma of the share do not exceed Rs. 250 ... . 25 0 0

If the annual jumma of the share exceed Rs. 250 and do not exceed Rs. 1,000, at the rate of ten per cent. upon the jumma.

If the annual jumma of the share exceed Rs. 1,000, at the rate of ten per cent. upon Rs. 1,000, and two per cent. upon all above that amount.

For filing an application for a deposit of money or Government Securities under Section XV. half per cent. on the amount deposited.

For any interest on Government Securities so deposited, drawn by the Collector, half per cent. of the amount drawn.

For filing an application for withdrawal of a deposit under Section XVI. half per cent. of the amount withdrawn.

For filing an application under Section XLI. XLII. or XLIII. for the registration of under-tenure or farm.

If the annual rent of the under-tenure. do not exceed Rs. 500 .. .. 25 0 0

If the annual rent of the under-tenure exceed Rs. 500 and

do not exceed Rs. 1,000, at the rate of five per cent upon the rent.

If the annual rent of the under-tenure exceed Rs. 1,000, at the above rate up to Rs. 1,000, and at one per cent. upon all above that amount.

BENGAL.--PILOTS.

ACT No. XII. OF 1859.

[*Passed on the 4th May,* 1859.

1. Repeals Act XXIV. 1845.

2. If any person in Pilot service or licensed as Pilot is accused of breach of duty, and it appears to Superintendent of Marine, &c. he shall be brought to trial, upon charges, &c. before Court under this Act.

3, 4. The Lieutenant Governor shall appoint a Judge of the Court; and (4) a person to conduct the proceedings as Prosecutor.

5. Every trial to be before the Judge and a Jury of two Merchants, one Master of ship and a Pilot of not less than twenty years' service

6,—8. The Judge shall keep a list of Merchants and list of Pilots liable to serve; and (7) when about to hold a trial, shall give notice to prosecutor and party for appointing a jury; and (8) at time and place specified shall in their presence read over names from the Jury list and propose a master for the Jury; and names read to be the Jury, if not objected to, or if objected to, grounds to be stated and Judge to decide, &c.

9. Judge to fix a day for trial and to summons jury; Juryman not attending may be fined Rs. 200, unless the Judge allows his excuse, and fine may be levied by distress and sale of goods, &c.

10. In case of non-attendance of full Jury, trial may proceed by consent of party and prosecutor, and if consent be not given, Judge may summons another juryman, or postpone the trial and resummons same Jury or new jurymen, subject to objection as on appointing original Jury.

11. Judge to keep a register of Jurymen who have served and not to summons them again till all in the list shall have served.

12. Jurymen to be sworn or affirmed to give a true verdict according to the evidence.

13. Judge at instance of prosecutor or of party or of his own motion may summons witness for trial, or if about to depart, &c. for examination before day of trial, giving notice to accused, but such witnesses may also be examined at the trial.

14. Witness neglecting to attend, &c. without sufficient excuse may be fined not exceeding Rs. 500 at discretion of Judge.

15. Evidence of witness to be given on oath, affirmation or otherwise according to practice of Supreme Court.

16. Verdict to be given on each charge, according to opinion of majority of Jurors, or if Jurors are equally divided, according to opinion of Judge.

17. Prescribes what sentence Judge may pass, and empowers G. of B. to establish a scale of offences and punishments.

18. Proceedings to be sent to Government, and no sentence to be carried out till approved, and Government may remit or mitigate punishment.

19. If the Judge deems the conviction wrong or trial insufficient, he may abstain from passing sentence, and certify to the Government.

20. Empowers the L. G. of B. to make rules of practice for the Court.

21. Act not to restrict the power of the Marine Authorities over Pilots in case of breach of duty deemed not sufficient for trial under this Act.

22. Licensed Pilot refusing to submit to trial, to lose his License.

23. Act to extend to all persons employed in the Pilot Service however remunerated.

An Act to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty.

Preamble.

Whereas it is expedient to amend the law for the trial of persons employed in the Pilot Service of Government, at the Presidency of Fort William in Bengal, when accused of breach of duty, and to extend the same to persons licensed to act as Pilots at the said Presidency; It is enacted as follows :—

Acts repealed.

I. Act XXIV. of 1845 *(for establishing a Court for the trial of Officers of the Pilot Service accused of breach of duty)* and I. of 1851 *(for the appropriation of fines levied under Act XXIV. of* 1845) are hereby repealed.

How Pilots accused of breach of duty shall be brought to trial.

II. When any person employed in the Pilot Service of Government at the Presidency of Fort William in Bengal, or licensed to act as a Pilot at the said Presidency, shall be accused of having committed any breach of duty while engaged in such Service, or acting under such license, and it shall appear to the Superintendent of Marine, or to the Lieutenant Governor of Bengal that such person ought to be brought to trial for such breach of duty, such person shall be brought to trial upon a charge or charges framed by the said Superintendent of Marine or such other person as the said Lieutenant Governor shall direct, before a Court constituted under the provisions of this Act.

Appointment of Judge.

III. The Lieutenant Governor of Bengal shall appoint a fit person to be Judge of the said Court.

IV. The Lieutenant-Governor shall appoint such person as he may think proper to conduct the proceedings before the Court as Prosecutor on the part of Government.

Appointment of Prosecutor

V. Every trial under this Act shall be held before the said Judge and a Jury composed of two Merchants of Calcutta, a Master of a Merchant Ship lying in the Port of Calcutta, and a Pilot of not less than twenty years' service.

Trial to be held before the Judge and Jury.

VI. The Judge shall cause to be prepared and shall keep two separate lists, one containing the names of Merchants, the other containing the name of Pilots, liable to serve on such Jury. The names in each list shall be arranged in alphabetical order, and place of abode and quality or business of each person named shall be stated.

Lists of Merchants and Pilots liable to serve on the Jury.

VII. When the Judge shall be about to hold a trial under this Act, he shall give notice to the prosecutor and to the party accused of a time and place to be fixed by the Judge for appointing a Jury to serve at such trial.

Notice to prosecutor and accused, of time and place for appointing Jury.

VIII. At the time and place mentioned in the notice, the Judge in the presence of the prosecutor and the person accused shall read over the names which first occur in each of the said lists of those Merchants and Pilots who he has reason to believe are present in Calcutta and capable of attending as Jurors at the trial; and shall also propose the name of a Master of a Merchant Ship lying in the Port of Calcutta, whom he deems qualified to serve on such Jury. If no objection be made and allowed, the persons so nominated shall be the Jury to serve at the trial. If the prosecutor or the party accused shall object to any of the persons named as Jurors, he shall assign the grounds of his objection and such objection shall forthwith be decided by the Judge. If the objection be allowed, the Judge shall read from the said lists or propose (as the case may be) another name in the place of the one objected to, and the person so nominated shall serve on the Jury provided no objection to such person be made and allowed as aforesaid.

Appointment of Jury

IX. When a Jury has been appointed under the last preceding Section, the Judge shall fix a day for the trial and shall summon by writing under his hand the persons so appointed to sit as a Jury. If any such person when duly summoned shall, without such excuse as the Judge shall allow to be sufficient, neglect or refuse to attend at the time appointed or to remain in attendance until the trial shall be completed, it shall be lawful for the said Judge to impose upon any such person a fine not exceeding two hundred Rupees for every such default; and such fine, if not paid, shall be levied by distress and sale of the goods and chattels of the defaulter under a warrant to be issued for that purpose by the Judge. Such warrant may be transmitted by the Judge to any Magistrate of Police for the town of Calcutta, and thereupon such Magistrate shall endorse the same and shall cause it to be executed in the same manner as if the warrant had been issued by such Magistrate.

Day of trial to be fixed and summons to issue to Jurors.

Penalty for non-attendance.

X. If for any cause any of the persons summoned to attend as Jurors shall not be in attendance at the time fixed for the commencement of the trial, the trial may with the consent of the prosecutor and the party accused be held before the Judge and such Jurors as shall be in attendance. If such consent be not given, the place of the absent Juror shall be supplied by some other person selected by the Judge from the same profession or calling as the person originally summoned and who shall consent to serve, provided no objection to such person be made and allowed in manner aforesaid. If the parties or either of them do not consent that the trial shall be held before the Judge and such Jurors as may be in attendance and the place of the absent Juror cannot be supplied by a person consenting to serve, the trial shall be postponed to another day and the Judge shall either re-summon the same Jury or appoint and summon another Jury in the manner hereinbefore provided.

Trial how to proceed if any of the Jurors do not attend.

XI. The Judge shall register in a book the names of all Jurors mentioned in either of the said two lists who have attended and served on a trial held under this Act. A Juror who has served shall not be required again to serve and his name shall be excluded in reading over

Register of Jurors who have served.

the Jury lists until all the persons named in the said lists who are present in Calcutta and capable of attending as Jurors shall have served.

Jurors to be sworn.

XII. Before the commencement of any trial under this Act, the persons summoned and attending as Jurors shall be sworn or affirmed by the Judge of the Court to give a true verdict according to the evidence.

Judge may summon witnesses to attend at a certain time and place.

XIII. It shall be lawful for the Judge of the said Court, at the instance of the prosecutor, or of the party accused, or of his own motion, by writing under his hand, to summon any person to attend as a witness at a time and place to be specified in the summons, for the purpose of being examined at any trial before the said Court; or if such person shall be about to depart from Calcutta, so as to be unable to attend at such trial without serious inconvenience, then to be examined before the Judge of the said Court before the day fixed for the trial; provided always that due notice of the time and place of such examination shall be given to the accused party; provided also that such witness may nevertheless be examined at the trial if he shall be able to attend thereat, in which case his previous examination may also be read at the trial.

Examination of witnesses about to leave Calcutta.

Penalty for witnesses not attending or refusing to give evidence.

XIV. If any person who shall have been duly summoned to attend as a witness shall, without sufficient excuse, neglect or refuse to attend, or attending shall refuse to give evidence or to answer any question which may be lawfully put to him, such person shall forfeit and pay such fine, not exceeding five hundred Rupees, as the Judge of the said Court shall order; and such fine, if not paid, shall be levied by distress and sale of the goods and chattels of the person ordered to pay the same in the manner prescribed in Section IX. of this Act.

Witnesses to be examined on oath, according to the rules in force in the Supreme Court.

XV. The evidence of every witness examined before the said Court shall be given on oath, affirmation, or otherwise, according to the rules in that behalf for the time being in force for the examination of witnesses in Her Majesty's Supreme Court of Judicature.

XVI. Upon the completion of the trial, the Jurors shall give

Verdict of Jurors.

their verdict upon the charge, or, if there be more than one, upon each separate charge. The verdict shall be according to the opinion of the majority of Jurors. If the Jurors are equally divided, the Judge shall declare his opinion, and the verdict shall be according to the opinion of the Judge and the Jurors with whom he concurs.

Sentence of Court if the accused be found guilty.

XVII. If by such verdict the accused person is found guilty of the charge or of any one or more of the charges preferred against him, the Judge of the Court shall sentence him to be dismissed from the said Pilot Service, or to have his license withdrawn, or shall award such other punishment, by loss of rank or pay, or by change of a license from a higher to a lower grade, or suspension from employment for a specified period, as to the Judge shall appear fit. The Lieutenant-Governor of Bengal, with the sanction of the Governor General in Council, may prepare a Schedule of offences and punishments (such punishments being of the same nature as those hereinbefore mentioned) for the guidance of the said Court; and if such Schedule be prepared and sanctioned, and the charge proved before the said Court is an offence specified in such Schedule, the Judge of the said Court shall award such punishment as is prescribed for such offence in the said Schedule, and no other. If by such verdict as aforesaid the accused person is found not guilty of the charge or charges preferred against him, the Judge shall declare him acquitted of the same

Schedule of offences and punishments to be prepared.

Acquittal.

No sentence to be final till approved by Government.

XVIII. The proceedings of the Court shall be sent by the Judge to the Superintendent of Marine for submission to the Lieutenant-Governor of Bengal; and no sentence of punishment pronounced by the Judge of the said Court shall be final until it has been approved of by the said Lieutenant-Governor. The said Lieutenant-Governor may remit the whole or any part of such sentence, or may direct the substitution of any mitigated punishment in lieu of the punishment awarded by the said Court, as he shall think fit.

Goverment may remit sentence or mitigate punishment.

XIX. If it shall appear to the Judge of the said Court that

If verdict of Jurors be manifestly contrary to evidence, or trial be otherwise insufficient.

the verdict of the Jurors is manifestly contrary to the evidence, or that the trial is otherwise insufficient, the Judge, instead of passing sentence on the accused person, or declaring him acquitted, as the case may be, may certify the same to the Lieutenant-Governor of Bengal, and the said Lieutenant-Governor may either order a new trial before another Jury, or acquit the accused person, as he shall think fit.

Power of Government to make rules of practice.

XX. It shall be lawful for the Lieutenant-Governor of Bengal to make such rules as he shall think proper, not inconsistent with the provisions of this Act, for conducting the proceedings and regulating the practice of the said Court.

Act not to restrict Marine Authorities or Government from passing orders upon a charge of breach of duty where a trial is not deemed necessary.

XXI. Nothing contained in this Act shall be held to restrict the Marine Authorities or the Government from passing such order as may be deemed proper upon any charge of breach of duty preferred against any person employed in the said Pilot Service, when it shall not be deemed necessary that such person should be brought to trial for such breach of duty under the provisions of this Act.

Withdrawal of license from licensed Pilot.

XXII. If any person licensed to act as a Pilot, when duly charged with breach of duty as aforesaid, shall refuse to submit himself to trial under the provision of this Act, the license of such person shall be withdrawn, and he shall be incapable of being again licensed to act as a Pilot at the said Presidency.

Act applicable to what persons.

XXIII. The provisions of this Act shall extend to all persons employed in the Pilot Service at the said Presidency and borne on the rolls of the Government establishment, whether such persons receive fixed salaries, or are remunerated by a portion of the pilotage charged on the vessels piloted by them, or in any other manner, and to all persons licensed to act as Pilots at the said Presidency.

PRESIDENCY TOWNS.--MASTERS AND WORKMEN.

ACT No. XIII. OF 1859.

[*Passed on the 4th May*, 1859.

1, 2, 3. Entitles employers in Presidency towns to complain to magistrate against artificers, &c. for not doing work according to contract, for which they have received an advance; and (2) empowers Magistrate to order performance, and on default to sentence artificer to be imprisoned &c. and (3) on making order for performance may require artificer to give security for performance, and on default of giving security may commit to prison.

4, 5. Act to extend to all contracts in whatever form for specified work, and (5) may be extended by government to the mofussil.

An Act to provide for the punishment of breaches of contract by Artificers, Workmen, and Laborers in certain cases.

Preamble.

Whereas much loss and inconvenience are sustained by manufacturers, tradesmen, and others in the several Presidency Towns of Calcutta, Madras, and Bombay, and in other places, from fraudulent breach of contract on the part of Artificers, Workmen, and Laborers who have received money in advance on account of work which they have contracted to perform; and whereas the remedy by suit in the Civil Courts for the recovery of damages is wholly insufficient, and it is just and proper that persons guilty of such fraudulent breach of contract should be subject to punishment; It is enacted as follows:—

If workman neglect to perform work, on account of which he has received an advance of money, complaint may be made to the Magistrate.

I When any Artificer, Workman, or Laborer shall have received from any master or Employer resident or carrying on business in any Presidency Town, or in any station of the Settlement of Prince of Wales' Island, Singapore, and Malacca, or from any person acting on behalf of such Master or Employer, an advance of money on account of any work which he shall have contracted to perform, or to get performed by any other Artificers, Workmen, or Laborers, if such Artificer, Workman, or Laborer shall wilfully and without lawful or reasonable excuse neglect or refuse to perform or get performed such work according to the terms of his contract, such Master or Employer or any such person as aforesaid may complain to a Magistrate of Police, and the Magistrate shall there-

upon issue a summons or a warrant, as he shall think proper, for bringing before him such Artificer, Workman, or Laborer, and shall hear and determine the case.

II. If it shall be proved to the satisfaction of the Magistrate that such Artificer, Workman, or Laborer has received money in advance from the complainant on account of any work, and has wilfully and without lawful or reasonable excuse neglected or refused to perform or get performed the same according to the terms of his contract, the Magistrate shall, at the option of the complainant, either order such Artificer, Workman, or Laborer to repay the money advanced, or such part thereof as may seem to the Magistrate just and proper, or order him to perform or get performed, such work according to the terms of his contract; and if such Artificer, Workman, or Laborer shall fail to comply with the said order, the Magistrate may sentence him to be imprisoned with hard labor for a term not exceeding three months, or if the order be for the repayment of a sum of money, for a term not exceeding three months, or until such sum of money shall be sooner repaid; provided that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any Civil remedy by action or otherwise which he might have had but for this Act.

Magistrate may order re-payment of advance or performance of contract.

Penalty if workman fail to comply with the order.

III. When the Magistrate shall order any Artificer, Workman, or Laborer to perform or get performed any work according to the terms of his contract, he may also at the request of the complainant, require such Artificer, Workman, or Laborer to enter into a recognizance with sufficient security for the due performance of the order; and in default of his entering into such recognizance or furnishing such security to the satisfaction of the Magistrate, may sentence him to be imprisoned with hard labor for a period not exceeding three months.

Magistrate may require workman to give security for due performance of order.

IV. The word "contract," as used in this Act, shall extend to all contracts and agreements whether by deed, or written or verbal, and whether such contract be for a term certain, or for specified work, or otherwise.

To what contracts the Act extends.

V. This Act may be extended by the Governor General of India in Council, or by the Executive Government of any Presidency or place, to any place within the limits of their respective jurisdictions. In the event of this Act being so extended, the powers hereby vested in a Magistrate of Police shall be exercised by such Officer or Officers as shall be specially appointed by Government to exercise such powers.

Act may be extended by Government.

LIMITATION OF SUITS.

ACT No. XIV. OF 1859.

[*Passed on the 4th May*, 1859.

Recites expediency of amending and consolidating the laws of limitation.

1. Declares that the period of limitation established by this Act shall supersede all other existing periods; viz. (1) one year in suits to enforce a right of pre-emption; (2) one year in suits for penalties or forfeiture established by Law, for damages to person, personal property or reputation, damages for infringement of Copyright or of any exclusive privilege; in suits for wages of servants, artizans or labourers, for tavern bills, board, lodging and in summary suits under specified Madras Reg.; (3) one year in suits to set aside sales under mofussil civil executions, or sales for arrears of government revenue or other demand recoverable as such; in suits by Putneedars and other under-tenure-holders for rents, or by same parties to set aside sale of putuee talooks or other under-tenure, and in suits to set aside sale under order of Collector or other revenue officer; (4) one year in suits to set aside attachment, lease or transfer of any land by the revenue officers, &c. or to recover money paid under protest for revenue account; (5) in suits to alter or set aside summary decisions and order of mofussil Courts; (6) three years in suits to contest awards under specified Beng. Regs.; (7) three years in suits by any party bound respecting the possession of property under Act IV. 1840, &c.; (8) three years in suits to recover the hire of animals, &c. or the amount of retail bills and for rents, &c.; (9 and 10) three years in suits for money lent, interest and breach of any contract, unless the contract be in writing or being in writing, it might have been registered and was not so for six months; (11) twelve years in cases governed by English law on debts of record or specialty or for a legacy; (12) twelve years in suits for recovery of immovable property not otherwise provided for; and (13) for shares in joint family property, or for maintenance, &c. and (14) by any proprietor for resumption of rent free land; (15) thirty years in suits against depositary, pawnee, or mortgagee for recovery of property if the property be

movable, and sixty years if immovable; and (16) six years, in all other suits.

2. Suits against trustees for the purpose of following specific property in their hands to be barred by no length of time; but suits for compensation out of estate of trustee to be barred in six years from death of trustee. Against right of co-trustee to contribution time to be six years from date of right to contribution.

3. Where this Act establishes a longer period of limitation than that of the existing Law, the existing Law to remain in force and this Act to be inoperative.

4, 5, 6, 7, 8. Period of limitation to run in suits for debt and legacy from date of written admission; (5) in suits of true owners, &c. against purchasers from trustees, &c. under defeasible title, from date of purchase; (6) in suits in Supreme Court by mortgagee for mortgaged estate, from date of last payment of interest, &c. (7) in suits to avoid incumbrances or under-tenures in an estate sold for arrears of revenue, &c. or of rent, from date of sale, &c. (8) in suits on mutual accounts current between merchants and traders from date of last item of current year.

9. In case of cause of action concealed by fraud, &c. limitation to run from discovery of fraud against wrong doer, &c.

10. In actions *ex fraude* the limitation to run from discovery of the fraud.

11, 12. In case of Parties under legal disability to sue, the period of disability not to be reckoned; (12) Such parties being married women under English Law, minors, idiots and lunatics.

13. Period of defendant's absence from India, not to be reckoned as part of the period of limitation, unless process could be served on him.

14. Time employed in suits brought erroneously on specified grounds not to be reckoned in the period of limitation.

15. In suits for recovering possession of movable property after wrongful dispossession, time to run from date of dispossession.

16. Equitable jurisdiction of Supreme Court to refuse relief on grounds of acquiescence not to be affected by this Act.

17. This Act not to extend to any public property on rights or claims of revenue.

18. This Act not to be applied to suits brought within two years from date of its being passed.

19. No proceeding to enforce judgment, &c. of Supreme Courts to be taken after 12 years from accruing of right to some person capable of releasing, &c; except in case of revivor, &c. and then time to run from date of revivor, &c. and Act not to apply to judgment, &c. till 3 years after date of being passed.

20, 21, 22, 23. Judgments, &c. of mofussil Courts not to be enforced by execution, unless revived within 3 years prior to date of its execution. (22) Same as to summary awards of Civil Courts; but (21) and (23) not to apply to existing judgments, &c. or summary awards, &c.

24. Act not to take effect in non-regulation provinces till extended thereto by order of Government.

An Act to provide for the Limitation of Suits.

Preamble.

Whereas it is expedient to amend and consolidate the laws relating to the limitation of suits; It is enacted as follows:—

Limitation of suits.

I. No suit shall be maintained in any Court of Judicature within any part of the British territories in India in which this Act shall be in force unless the same is instituted within the period of limitation hereinafter made applicable to a suit of that nature, any Law or Regulation to the contrary notwithstanding; and the periods of limitation, and the suits to which the same respectively shall be applicable, shall be the following, that is to say.—

Limitation of one year. Pre-emption suits.

1. To suits to enforce the right of pre-emption, whether the same is founded on law or general usage or on special contract, the period of one year to be computed from the time at which the purchaser shall have taken possession under the sale impeached.

Limitation of one year.

Suits for damages, summary suits, &c.

2. To suits for pecuniary penalties or forfeitures for the breach of any Law or Regulation; to suits for damages for injury to the person and personal property, or to the reputation; to suits for damages for the infringement of copyright, or of any exclusive privilege; to suits to recover the wages of servants, artizans, or laborers, the amount of tavern bills or bills for board and lodging or lodging only; and to summary suits before the Revenue authorities under Regulation V. 1822 of the Madras Code—the period of one year from the time the cause of action arose.

Limitation of one year.

Suits to set aside sales under decrees or for arrears of Government Revenue, &c.

3. To suits to set aside the sale of any property, movable or immovable, sold under an execution of a decree of any Civil Court not established by Royal Charter when such suit is maintainable; to suits to set aside the sale of any property, movable or immovable, for arrears of Government Revenue or other demand recoverable in like manner; to suits by a Putneedar or the proprietor of any other intermediate tenure saleable for current arrears of rent, or other person claiming under him, to set aside the sale of any Putnee Talook

or such other tenure sold for current arrears of rent; to suits to set aside the sale of any property, movable or inmovable, sold in pursuance of any decree or order of a Collector or other Officer of Revenue—the period of one year from the date at which such sale was confirmed or would otherwise have become final and conclusive if no such suit had been brought.

Limitation of one year.

Suits to set aside attachments, &c. by Revenue Authorities for arrears of Government Revenue.

4. To suits to set aside any attachment, lease, or transfer of any land or interest in land by the Revenue Authorities for arrears of Government Revenue or to recover any money paid under protest in satisfaction of any claim made by the Revenue Authorities on account of arrears of revenue or demands recoverable as arrears of revenue—one year from the date of such attachment, lease, or transfer, or of such payment as the case may be.

Limitation of one year.
Suits to set aside summary decisions, &c.

5. To suits to alter or set aside summary decisions and orders of any of the Civil Courts not established by Royal Charter, when such suit is maintainable—the period of one year from the date of the final decision, award, or order in the case.

Limitation of three years.
Suits to contest certain awards.

6. To suits brought by any person to contest the justice of an award which shall have been made under Regulation VII. 1822, Regulation IX. 1825, and Regulation IX. 1833 of the Bengal Code, or to recover any property comprised in such award—the period of three years from the date of the final award or order in the case.

Limitation of three years.
Suits to recover property comprised in an order made under Clause 2 Section I. Act XVI. of 1838 or Act IV. of 1840.

7. To suits by any party bound by any order respecting the possession of property made under Clause 2 Section I. Act XVI. of 1838, or Act IV. of 1840, of any person claiming under such party, for the recovery of the property comprised in such order—the period of three years from the date of the final order in the case.

Limitation of three years.
Suits for goods sold by retail, &c.

8. To suits to recover the hire of animals, vehicles, boats, or household furniture; or the amount of bills for any articles sold by retail; and to all suits for the rents of any buildings or lands (other than summary suits before the Revenue authorities under Regu-

lation V. 1822 of the Madras Code)—the period of three years from the time the cause of action arose.

9. To suits brought to recover money lent or interest, or for the breach of any contract—the period of three years from the time when the debt became due or when the breach of contract in respect of which the suit is brought first took place, unless there is a written engagement to pay the money lent or interest or a contract in writing signed by the party to be bound thereby or by his duly authorized agent.

Limitation of three years.
Suits for money lent or interest or for breach of contract where no written contract exists.

10. To suits brought to recover money lent or interest, or for the breach of any contract in cases in which there is a written engagement or contract and in which such engagement or contract could have been registered by virtue of any law or Regulation in force at the time and place of the execution thereof—the period of three years from the time when the debt became due or when the breach of contract in respect of which the action is brought first took place, unless such engagement or contract shall have been registered within six months from the date thereof.

Limitation of three years.
Suits for the same where there is a written contract which has not been registered within six months.

11. To suits in cases governed by English law upon all debts and obligations of record and specialties; and to suits for the recovery of any legacy—the period of twelve years from the time the cause of action arose.

Limitation of 12 years.
Suits for specialty-debts and legacies.

12. To suits for the recovery of immovable property or of any interest in immovable property to which no other provision of this Act applies—the period of twelve years from the time the cause of action arose.

Limitation of 12 years.
Suits for immovable property.

13. To suits to enforce the right to share in any property movable or immovable on the ground that it is joint family property; and to suits for the recovery of maintenance, where the right to receive such maintenance is a charge on the inheritance of any estate—the period of twelve years from the death of the persons from whom the property alleged to be joint

Limitation of 12 years.
Suits for shares in joint family property and for maintenance.

is said to have descended, or on whose estate the maintenance is alleged to be a charge; or from the date of the last payment to the plaintiff or any person through whom he claims, by the person in the possession or management of such property or estate on account of such alleged share, or on account of such maintenance as the case may be.

Limitation of 12 years.
Suits to resume or assess Lakheraj or rent-free land.

14. To suits by the proprietor of any land or by any person claiming under him, for the resumption or assessment of any Lakheraj or rent-free land—the period of twelve years from the time when the title of the person claiming the right to resume and assess such lands, or of some person under whom he claims, first accrued. Provided that in estates permanently settled no such suit, although brought within twelve years from the time when the title of such person first accrued, shall be maintained, if it is shown that the land has been held Lakheraj or rent-free from the period of the permanent settlement.

Proviso if the land has been held rent-free from the time of the permanent settlement.

Limitation for 30 and 60 years respectively.
Suits against depositaries, pawnees, or mortgagees to recover immovable property.

15. To suits against a depositary, pawnee, or mortgagee of any property movable or immovable for the recovery of the same—a period of thirty years if the property be movable and sixty years if it be immovable, from the time of the deposit, pawn, or mortgage; or if in the mean time an acknowledgment of the title of the depositor, pawner, or mortgagor, or of his right of redemption, shall have been given in writing signed by the depositary, pawnee, or mortgagee or some person claiming under him, from the date of such acknowledgment in writing.

Limitation of six years applicable to all suits not especially provided for.

16. To all suits for which no other limitation is hereby expressly provided—the period of six years from the time the cause of action arose.

Suits against trustees and their representatives for breach of trust, &c.

II. No suit against a trustee in his lifetime and no suits against his representatives for the purpose of following in their hands the specific property which is the subject of the trust, shall be barred by any length of time; but no suit to make good the loss

occasioned by a breach of trust out of the general estate of a deceased trustee shall be maintained in any of the said Courts unless the same is instituted within the proper period of limitation according to the last preceding Section, to be computed from the decease of such trustee; provided that nothing herein contained shall prevent a co-trustee from enforcing, against the estate of a deceased trustee, any claim for contribution, if he shall institute a suit for that purpose within six years after such right of contribution shall have arisen.

Proviso.

III. When, by any law now or hereafter to be in force, a shorter period of limitation than that prescribed by this Act is specially prescribed for the institution of a particular suit, such shorter limitation shall be applied notwithstanding this Act.

Shorter periods of limitation, if prescribed by particular Acts, to prevail.

IV. If, in respect of any legacy or debt, the person who, but for the law of limitation, would be liable to pay the same, shall have admitted that such debt or legacy or any part thereof is due, by an acknowledgment in writing signed by him, a new period of limitation, according to the nature of the original liability, shall be computed from the date of such admission; provided that, if more than one person be liable, none of them shall become chargeable by reason only of a written acknowledgment signed by another of them.

Revival of right to sue by admission in writing.

Proviso.

V. In suits for the recovery from the purchaser or any person claiming under him of any property purchased *bona fide* and for valuable consideration from a trustee, depositary, pawnee, or mortgagee, the cause of action shall be deemed to have arisen at the date of the purchase. Provided that in the case of purchase from a depositary, pawnee, or mortgagee, no such suit shall be maintained unless brought within the time limited by Clause 15 Section I.

Computation of period of limitation in suits to recover property purchased from depositaries, pawnees, or mortgagees.

Proviso.

VI. In suits in the Courts established by Royal Charter by a mortgagee to recover from the mortgagor the possession of the immovable property mortgaged, the cause of action shall be deemed to have arisen from the latest date at which any portion of principal money or interest was paid on account of such mortgage debt.

Computation of period of limitation in suits in Supreme Courts by mortgagee to recover immovable property mortgaged.

Computation of period of limitation in suits to avoid incumbrances or under-tenures in estates sold for arrears of Government Revenue.

VII. In suits to avoid incumbrances or undertenures in an estate sold for arrears of Government Revenue due from such estate, or in a Putnee Talook or other saleable tenure sold for arrears of rent which by virtue of such sale becomes freed from incumbrances and under-tenures, the cause of action shall be deemed to have arisen at the time when the sale of the estate, talook, or tenure became final and conclusive.

Computation of period of limitation in suits between merchants for balances of accounts current.

VIII. In suits for balances of accounts current between merchants and traders who have had mutual dealings, the cause of action shall be deemed to have arisen at, and the period of limitation shall be computed from the close of the year in the accounts of which there is the last item admitted or proved indicating the continuance of mutual dealings; such year to be reckoned as the same is reckoned in the accounts.

Computation of period of limitation in case of concealed fraud.

IX. If any person entitled to a right of action shall by means of fraud have been kept from the knowledge of his having such right or of the title upon which it is founded, or if any document necessary for establishing such right shall have been fraudulently concealed, the time limited for commencing the action against the person guilty of the fraud or accessary thereto, or against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be reckoned from the time when the fraud first became known to the person injuriously affected by it or when he first had the means of producing or compelling the production of the concealed document.

Computation of period of limitation in suits where the cause of action is founded on fraud.

X. In suits in which the cause of action is founded on fraud, the cause of action shall be deemed to have first arisen at the time at which such fraud shall have been first known by the party wronged.

Computation of period of limitation in case of legal disability.

XI. If at the time when the right to bring an action first accrues the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause

of action accrued, unless such time shall exceed the period of three years in which case the suit shall be commenced within three years from the time when the disability ceased; but if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal disability of any person claiming through him.

What persons to be deemed to be under legal disability under preceding Section.

XII. The following persons shall be deemed to be under legal disability within the meaning of the last preceding Section—married women in cases to be decided by English law, minors, idiots, and lunatics.

Computation of period of limitation in case of absence of defendant.

XIII. In computing any period of limitation prescribed by this Act, the time during which the defendant shall have been absent out of the British territories in India shall be excluded from such computation unless service of a summons to appear and answer in the suit can during the absence of such defendant be made in any mode prescribed by law.

Computation of period of limitation in case of suit prosecuted *Boná fide*, but in wrong Court.

XIV. In computing any period of limitation prescribed by this Act, the time during which the claimant, or any person under whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same defendant, or some person whom he represents, *boná fide* and with due diligence, in any Court of Judicature which, from defect of jurisdiction or other cause, shall have been unable to decide upon it, or shall have passed a decision which, on appeal, shall have been annulled for any such cause, including the time during which such appeal, if any, has been pending, shall be excluded from such computation.

Person unlawfully dispossessed of immovable property may recover possession notwithstanding any title that may be set up.

XV. If any person shall without his consent have been dispossessed of any immovable property otherwise than by due course of law, such person or any person claiming through him shall in a suit brought to recover possession of such property be entitled to recover possession thereof notwithstanding any other title that may be set up in such suit, provided that the suit be commenced within six months from the time of such dispossession. But nothing

Suit for dispossession to be brought within six months.

in this Section shall bar the person from whom such possession shall have been so recovered or any other person instituting a suit to establish his title to such property and to recover possession thereof within the period limited by this Act.

Suit to establish title not to be affected.

XVI. Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of any Court established by Royal Charter in refusing equitable relief on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act.

Act not to interfere with equitable jurisdiction of Supreme Courts.

XVII. This Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue or for any public claim whatever, but such suits shall continue to be governed by the laws or rules of limitation now in force.

Act not to extend to public property, nor to suits for the recovery of public claims.

XVIII. All suits that may be now pending or that shall be instituted within the period of two years from the date of the passing of this Act shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted after the expiration of the said period shall be governed by this Act and no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.

Act not to apply to suits now pending or to suits instituted within two years.

Suits afterwards instituted to be governed by this Act.

XIX. No proceeding shall be taken to enforce any judgment, decree, or order of any Court established by Royal Charter, but within twelve years next after a present right to enforce the same shall have accrued to some persons capable of releasing the same, unless in the meantime such judgment, decree, or order shall have been duly revived or some part of the principal money secured by such judgment, decree, or order or some interest theron shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable or his agent to the person entitled thereto or his agent; and in any such case no proceeding shall be brought to enforce the said judgment, decree, or order, but within twelve years after such revivor, payment, or acknowledgment or the latest of such revivors, payments, or ac-

Proceedings for enforcing judgments, &c. of Supreme Courts to be taken within twelve years.

knowledgments as the case may be provided that for three years next after the passing of this Act, every judgment, decree, and order which may be in force at the date of the passing of this Act shall be governed by the law now in force, anything therein contained notwithstanding.

Proviso as to judgments now in force.

XX. No process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree, or order or to keep the same in force within three years next preceding the application for such execution.

Time for enforcing execution of judgment &c., of a Civil Court not established by Royal Charter.

XXI. Nothing in the preceding Section shall apply to any judgment, decree, or order in force at the time of the passing of this Act, but process of execution may be issued either within the time now limited by law for issuing process of execution thereon or within three years next after the passing of this Act, whichever shall first expire.

Preceding Section not to apply to judgments, &c., in force at the passing of this Act.

XXII. No process of execution shall issue to enforce any summary decision or award of any of the Civil Courts not established by Royal Charter or of any Revenue Authority unless some proceeding shall have been taken to enforce such decision or award or to keep the same in force within one year next preceding the application for such execution.

Time for execution of a summary award of Civil Court or Revenue Authority.

XXIII. Nothing in the preceding Section shall apply to any summary decision or award in force at the time of the passing of this Act, but process of execution may be issued either within the time now limited by law for issuing process of execution thereon or within two years next after the passing of this Act whichever shall first expire.

Preceding Section not to apply to summary awards in force at the passing of this Act.

XXIV. This Act shall take effect throughout the Presidencies of Bengal, Madras, and Bombay, including the Presidency Towns and the Straits' Settlement; but shall not take effect in any Non-regulation Province or place until the same shall be extended thereto by public notification by the Governor General in Council or by the

Operation of Act.

local Government to which such Province or place is subordinate.

Trial of pending suits, &c., in any Non-Regulation Province or place to which the Act is extended.

Whenever this Act shall be extended to any Non-Regulation Province or place by the Governor General in Council or by the local Government to which such Province or place is subordinate, all suits which within such Province or place shall be pending at the date of such notification or shall be instituted within the period of two years from the date thereof, shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted within such Province or place after the expiration of the said period, shall be governed by this Act and by no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.

PATENTS.

ACT No. XV. OF 1859.

[*Passed on the* 17*th May*, 1859.

Recites Act VI. 1856 and the opinion of Her Majesty's Law officers that the Leg. C. was not competent to pass it, and its disallowance and subsequent repeal. Also recites the expediency of making a patent law. Enacts.

1, 2, 3, 4. Entitles inventor of any new manufacture to petition the G. G. in C. for leave to file a specification thereof, and gives a form of petition; and (2) authorizes the G. G. in C. to grant petition; but (3) he may previously refer the petition to be reported upon; and (4) if within six months after date of order, specification be filed, the petitioner, &c. shall be entitled to sale and exclusive privilege, &c. for 14 years and for such further term not exceeding 14 years more as G. G. in C. may direct upon petition within specified time.

5. Order authorizing the filing of specification, &c may be made subject to any conditions and restrictions the G. G. in C. may direct.

6. Specification shall be in writing and signed, and describe and ascertain the nature of the said invention, &c.

7, 8. Petition for leave to file specification shall be left with Secretary to the Gt. of I. in the Home Dt. and be accompanied with declaration in form prescribed, by inventor or agent, as the case may be; and (8) any false statement in declaration shall be equivalent to perjury.

9. No specification to be filed until prepayment of fees, &c.

10. At time of delivering specification, 5 copies to be left with it for local Government, &c.

11, 12, 13. Book to be kept in office of Sec. to Government to record the petition and specification and order for same and all orders relating thereto (12) such book to be open to inspection and copy from given, &c. on payment of fee and (13) such copy to be *primâ facie* evidence.

14. If from mistake or inadvertence mis-statement has been made in petition or specification or something not new or not invented by petitioner is stated, &c. the petitioner may petition G. G. in C. for leave to file an amended specification; petition to state how the error, &c. occurred, and to deny fraudulent intention.

15. No person to be entitled to exclusive privilege if the invention is not useful, or not new or not by the petitioner, or if the specification has defects specified or contains wilful or fraudulent mis-statement.

16. Every exclusive privilege shall cease, if G. G. in C. shall declare it or the mode in which it is exercised is mischievous to the State, &c. or if breach of condition be established in Supreme Court and G. G. in C. annul the privilege.

17. Importer of new invention not entitled to file specification.

18. Foreign inventor may petition.

19. An invention shall be deemed new if it shall not have been publicly used in India or the U. K. or made known by means of publication. But public use or knowledge to be of no effect if made in fraud or breach of confidence; unless acquiesced in; and public use by or for the inventor himself for a year, &c. not to prevent his taking out a patent.

20. Inventor having English patent may petition for Indian patent within 12 months after date of English patent, &c. and invention shall be deemed new if not used or known in India, &c. before date of English patent, &c.

21. Exclusive privilege not to affect any person who used the invention in India prior to 7th July 1855.

22. Action may be maintained for infringement of patent right; but only in local Court of district in which cause of action arose or defendant shall reside.

23. Action shall not be defended on ground of defect &c., of specification or of wilful or fraudulent mis-statement in petition, &c. or of invention not being useful or of patentee not being the inventor, unless the defendant was the inventor, &c. or of its not being new, except in case of previous use of the invention by the defendant.

24, 25. Any person may apply by motion to Supreme Court for rule to show that no exclusive privilege has been acquired on any of several specified grounds, viz. that the invention is not useful, that petitioner was not the inventor, that the specification is insufficient or fraudulent or too extensive or that petition was wilfully false &c. or that part of invention is insufficiently described, &c.; or (25) that such part is distinct from the rest and of no utility, or that such was not new or not the invention of petitioner, or that the description of such part, &c. is insufficient.

26. Authorizes the A. G., by order of the G. G. in C., to apply to Supreme

Court for rule for a trial by any issue of any grounds on which the G. G. in C. may annul the patent.

27. Rules under ss. 24, 25 and 26 to be served on proprietors of invention, &c.

28. Supreme Court may direct an issue and try or send the same for trial to another Court in a summary way and may order new trial, &c.

29, 30. Supreme Court on application under ss. 24, 25, to give judgment that exclusive privilege has not been acquired according to its opinion, costs to be at its discretion; or (30) in case it shall think that there was error of specified kind in the petition, &c. may adjudge the privilege to be valid and allow an amendment.

31. Exclusive privilege shall not be defeated for mis-statement in petition unless it was fraudulent.

32. Secretary to Government to cause entry on the registered specification, of order of Supreme Court, in specified case.

33. Court within whose jurisdiction patentee resides may compel him to assign the patent right to the actual inventor, if himself is not so.

34. In action for infringement of patent plaintiff shall deliver particulars of the breaches and defendant particulars of his grounds for denying the plaintiff's title to exclusive privilege: similar particulars to be deliverd in proceedings under ss. 24, 25, 26, and trial to be confined to grounds notified, but particulars may be amended by leave of Court.

35. Book to be kept in office of Sec. to Govt. in which every patentee or his assignee shall cause to be stated some place in India where he may be served with rules under this Act, and service accordingly shall be valid.

36. Act VI. 1856 to be of same force and effect as if valid, in regard to proceedings had under it; and importers to have the benefit of it if availed of within 2 years after passing of this Act.

37. Petition for leave to file a specification to be on stamp of 100 rupees.

38. Interpretation of words:

An Act for granting exclusive privileges to Inventors.

Preamble.

Whereas Act VI. of 1856, entitled "An Act for granting exclusive privileges to Inventors," was passed by the Legislative Council of India without the sanction of Her Majesty to the passing thereof having been previously obtained and signified in pursuance of the Statute passed in the seventeenth year of the reign of Her Majesty, entitled "An Act to provide for the Government of India:" and whereas Her Majesty's Law Officers having given it as their opinion that the Legislative Council of India was not competent to pass Act VI. of 1856 without previously obtaining the sanction of the Crown, and the Court of Directors of the East India Company having in pursuance of the power vested in them

by law disallowed Act VI. of 1856 and having signified to the Governor General of India in Council their disallowance thereof, the said Act was repealed by Act IX. of 1857; and whereas it is expedient, for the encouragement of Inventors of new manufactures, that certain exclusive privileges in their inventions should be granted to them in India, and that exclusive privileges obtained under the said Act should be protected: It is enacted as follows (The sanction of Her Mejesty to the passing of this Act having been previously obtained and signified in pursuance of the said Statute):—

Inventor may petition for leave to file specification.

I. The inventor of any new manufacture may petition the Governor General of India in Council for leave to file a specification thereof. Every such petition shall be in writing in the form or to the effect mentioned in the Schedule hereunto annexed, and shall be signed by the petitioner, or, in case the petitioner shall be absent from India, by an authorized agent, and shall state the name, addition, and place of residence of the petitioner, and the nature of the invention.

Form &c. of petition.

Order to file specification.

II. Upon such petition, the Governor General of India in Council may make an order authorizing the petitioner to file a specification of the invention.

Power to refer petition for enquiry and report.

III. Before making such order, the Governor General of India in Council may refer the petition to any person or persons for enquiry and report, and such person or persons shall be entitled to a reasonable fee for such enquiry and report to be paid by the petitioner: the amount of such fee, in case of dispute, to be settled by a Judge of one of Her Mejesty's Courts of Judicature in a summary manner.

Petitioner entitled to exclusive privilege for 14 years from the time of filing specification.

IV. If, within the space of six calendar months from the date of such order, the petitioner cause a specification of his invention to be filed in manner hereinafter mentioned, the petitioner, his executors, administrators, or assigns, shall be entitled to the sole and exclusive privilege of making, selling, and using the said invention in India, and of authorizing others so to do, for the term of fourteen years from the time of filing such specification, and for such further term (if any), not

Extension of term of exclusive privilege.

exceeding fourteen years from the expiration of the first fourteen years, as the Governor General of India in Council may think fit to direct, upon petition to be presented by such inventor, at any period not more than one year, and not less than six calendar months, before the expiration of the exclusive privilege hereby granted.

Order to file specification may be made subject to conditions.

V. An order authorizing the filing of a specification, or for extending the term of such exclusive privilege as aforesaid, may be made subject to any such conditions and restrictions as the Governor General of India in Council may think expedient.

Specification to be in writing and to describe the invention.

VI. Every specification of an invention filed under this Act shall be in writing, and shall be signed by the petitioner, and shall particularly describe and ascertain the nature of the said invention and in what manner the same is to be performed.

Petition and specification to be left with Secretary to Government.

Petition &c. to be accompanied by declaration.

Date of delivery to be endorsed on petition.

VII. Every petition for leave to file a specification and every specification filed under this Act shall be left with the Secretary to the Government of India in the Home Department, and every petition and specification shall be accompanied by a declaration in writing signed by the petitioner in the forms or to the effect mentioned in the Schedule hereunto annexed, and if the inventor be absent from India, the petition and specification shall also be accompanied by a declaration signed by the agent who shall present or file the same, to the effect that he verily believes that the declaration purporting to be the declaration of the inventor was signed by him, and that the contents thereof are true, which declaration shall be in the form or to the effect mentioned in the said Schedule. The date of the delivery of every such petition and specification shall be endorsed on the same respectively, and shall also be recorded at the Office of the said Secretary.

False statement in declaration punishable as perjury.

VIII. If any person, who shall make a declaration under this Act, shall wilfully and corruptly make any false statement therein, he shall be deemed guilty of perjury, and shall be proceeded against, and upon conviction punished accordingly.

IX. No specification shall be filed until the petitioner shall

Specification not to be filed before payment of fees.

have paid all fees payable under this Act, including the fees (if any) of the person or persons to whom the petition shall have been referred for enquiry and report.

Copies of specification to be delivered and distributed.

X. At the time of delivering the specification for the purpose of being filed, the petitioner shall cause to be delivered to the said Secretary five copies thereof, of which

One shall be sent to and filed by one of the Secretaries to the Government of Bengal;

One shall be sent to and filed by one of the Secretaries to the Government of Fort St. George;

One shall be sent to and filed by one of the Secretaries to the Government of Bombay; and

One shall be sent to and filed by one of the Secretaries to the Government of the North-Western Provinces.

To be open to inspection.

A copy of such specification shall be open at all reasonable times at the Office of each of the said Secretaries to public inspection upon payment of a fee of one Rupee.

Book for the registry of petitions, specifications, &c.

XI. A book shall be kept in the Office of the said Secretary to the Government of India wherein shall be entered and recorded every such petition and specification and every order made upon such petition or relating to the invention therein mentioned. Every specification shall be numbered according to the order in which it is entered in such book; and a reference shall be made in such book, in the margin of the entry of each specification, to every order relating to the invention, and to every petition, memorandum, or amended specification which shall be filed under the provisions of Section XIV.

Inspection of registry book.

XII. Such book, or a copy thereof, shall be open at all convenient times for the inspection of any person upon payment of a fee of one Rupee; and the said Secretary shall cause a copy of any entry therein, certified under his hand, to be given to any person requiring the same, on payment of the expense of copying.

Certified copy of entry to be given.

XIII. Every such certified copy shall be *primâ facie* evi-

Certified copy to be *primâ facie* evidence.

dence of the document of which it purports to be a copy.

XIV. If, after the filing of the specification, the petitioner shall have reason to believe that through mistake or inadvertence he has erroneously made any mis-statement in his petition or specification or included therein something which at the date of his petition was not new or whereof he was not the inventor, or that such specification is in any particular defective or insufficient, he may petition the Governor General in Council for leave to file a memorandum pointing out such error, defect, or insufficiency, and disclaiming any part of the alleged invention, or, in case of any defect or insufficiency of the specification, for leave to file an amended specification. The petition shall state how the error, defect, or insufficiency occurred and that it was not fraudulently intended, and shall be accompanied by a declaration in writing signed by the petitioner and if he be absent from India by his agent stating that the contents of such petition are true to the best of his knowledge and belief. Upon such petition the Governor General in Council may make an order allowing such memorandum or amended specification to be filed. All the provisions of Sections X, XI, XII, and XIII, applicable to specifications, shall be applicable to the petitions, orders, and memoranda or amended specifications referred to in this Section.

In what cases petitioner may apply for leave to file amended specification.

Effect of amended specification.

An amended specification filed under the provisions of this Act shall, except as to suits or proceedings relating to the exclusive privilege which shall be pending at the time of the filing of such amended specification, have the same effect as if it had been the specification first filed, provided that nothing contained in an amended specification shall extend or enlarge any exclusive privilege before acquired.

No person entitled to exclusive privilege in any of the following cases—

XV. No person shall be entitled to any exclusive privilege under the provisions of this Act—

If invention of no utility, or

If the invention is of no utility, or

If invention not new or

If the invention, at the time of presenting the petition for leave to fill the specification, was not a new invention within the meaning of this Act, or

If petitioner is not inventor, or

If the petitioner is not the inventor thereof, or

If the specification filed or the amended specification (if any) does not particularly describe and ascertain the nature of the invention and in what manner the same is to be performed, or

If specification does not describe the invention.

If the original or any subsequent petition relating to the invention, or the original or any amended specification contain a wilful or fraudulent misstatement.

If petition or specification contain wilful or fraudulent misstatement.

XVI. Every exclusive privilege under this Act shall cease if the Governor General of India in Council shall declare that the same, or the mode in which it is exercised, is mischievous to the State, or generally prejudicial to the public; or if a breach of any special condition on which the petitioner shall be authorized to file a specification, or upon which the term of the exclusive privilege shall be extended, shall be proved to the satisfaction of any of Her Majesty's Courts of Judicature, and if the Governor General of India in Council shall thereupon declare that such exclusive privilege shall cease.

Exclusive privilege to cease if Government declare it mischievous &c. to public.

Or if Government upon breach of condition proved, declare that it shall cease.

XVII. The importer into India of a new invention shall not be deemed an inventor within the meaning of this Act, unless he be the actual inventor.

Importer of invention, if not the actual inventor, not to be deemed inventor.

XVIII. A foreigner, whether resident abroad or not, may petition for leave to file a specification under this Act.

Foreign inventor.

XIX. An invention shall be deemed a new invention within the meaning of this Act, if it shall not, before the time of applying for leave to file the specification, have been publicly used in India or in any part of the United Kingdom of Great Britain and Ireland, or been made publicly known in any part of India or of the United Kingdom by means of a publication, either printed or written or partly printed and partly written. The public use or knowledge of an invention, prior to the application for leave to file a specification, shall not be deemed a public use or knowledge within the meaning

An invention not publicly used or known in the United Kingdom or in India before the application for leave to file his specification to be deemed a new invention within this Act.

Knowledge of invention fraudulently acquired.

of this Section, if the knowledge shall have been obtained surreptitiously or in fraud of the inventor, or shall have been communicated to the public in fraud of the inventor or in breach of confidence: provided the inventor shall, within six calendar months after commencement of such public use, apply for leave to file his specification, and shall not previously have acquiesced in such public use; provided also that the use of an invention in public by the inventor thereof, or by his servants, or agents, or by any other person by his license in writing, for a period not exceeding one year prior to the date of his petition, shall not be deemed a public use thereof within the meaning of this Act.

Proviso.

Public use by inventor.

XX. If an inventor who prior to the time of applying for leave to file a specification of an invention under this Act, shall have obtained Her Majesty's Letters Patent for the exclusive use of such invention in the United Kingdom or any part thereof shall, within twelve calendar months from the passing of this Act, or within twelve calendar months from the date of such Letters Patent, petition the Governor General of India in Council for leave to file a specification of such invention (which petition shall be in writing in the form or to the effect mentioned in the Schedule), the invention shall be deemed a new invention within the meaning of this Act, if it was not publicly known or used in India at or before the date of the petition for such Letters Patent, notwithstanding it may have been publicly known or used in some part of the United Kingdom or in India before the time of his petitioning, under this Act, for leave to file the specification; Provided the petition for leave file the specification shall state that such Letters Patent have been granted, and shall also state the date thereof and the term during which the same are to continue in force. Provided also that an exclusive privilege, obtained under the provisions of this Act by an inventor who has obtained Her Majesty's Letters Patent for the exclusive use of such invention, shall cease to have effect, if such Letters Patent be revoked or cancelled; and that no such exclusive privilege

Inventor having obtained English Letters Patent, to petition within 12 months from the passing of this Act or from the date of the Letters Patent.

Invention if not publicly known or used in India at the time of applying for such Letters Patent to be deemed new.

What to be stated in such petition.

Duration of exclusive privilege.

shall extend beyond the term granted by such Letters Patent unless the same shall be renewed, in which case the exclusive privilege may be renewed under this Act for the extended term or any part thereof.

Saving of rights of persons who used invention before 7th of July 1855.

XXI. No exclusive privilege obtained under this Act shall entitle the owner of such privilege to exclude any person from using the invention, who, prior to the 7th day of July 1855, used the same in India.

Action for infringement

XXII. An action may be maintained by an inventor against any person who, during the continuance of any exclusive privilege granted by this Act, shall, without the license of the said Inventor, make, use, sell, or put in practice the said invention, or who shall counterfeit or imitate the same. Provided that no such action shall be maintained in any Court other than the principal Court of original jurisdiction in Civil cases within the local limits of whose jurisdiction the cause of action shall accrue or the defendant shall reside as a fixed inhabitant.

Defect in specification or petition, or want of novelty in Invention, &c. no defence to action for infringement.

XXIII. No such action shall be defended upon the ground of any defect or insufficiency of the specification of the invention, nor upon the ground that the original or any subsequent petition relating to the invention, or the original or any amended specification contains a wilfulor fraudulent mis-statement, nor upon the ground that the invention is not useful; nor shall any such action be defended upon the ground that the plaintiff was not the inventor, unless the defendant shall show that he is the actual inventor or has obtained a right from him to use the invention either wholly or in part. Any such action may be defended upon the ground that the invention was not new, if the person making the defence, or some person through whom he claims, shall, before the date of the petition for leave to file the specification, have publicly or actually used in India or in some part of the United Kingdom, the invention, or that part of it of which the infringement shall be proved; but not otherwise.

The actual use of an invention in India or the United Kingdom before date of petition, a defence to such action.

XXIV. It shall be lawful for any person to apply by motion

Application to Supreme Courts to declare exclusive privilege not to have been acquired on following grounds—

to any of Her Majesty's Courts of Judicature for a rule to show cause why the Court should not declare that an exclusive privilege in respect of an invention has not been acquired under the provisions of this Act by reason of all or any of the objections following (to be specified in the rule), that is to say—

Invention of no utility.

That the said invention is of no utility, or

Invention not new.

That the said invention was not, at the time of presenting the petition for leave to file the specification a new invention within the meaning of this Act, or

Petitioner not the inventor.

That the petitioner was not the inventor thereof, or

Invention not described in specification.

That the specification filed or the amended specification (if any) does not particularly describe and ascertain the nature of the invention or in what manner the same is to be performed, or

Fraud in petition or specification.

That the petitioner has knowingly or fraudulently included in the petition or specification or amended specification, as part of his invention, something which was not new or whereof he was not the inventor, or

Fraudulent mis-statement in petition or specification.

That the original or any subsequent petition relating to the invention or the original or any amended specification contains a wilful or fraudulent mis-statement, or

Insufficient description of part of invention in specification.

That some part of the invention, or the manner in which that part is to be performed as described in the specification filed or the amended specification, is not thereby sufficiently described and ascertained, and that such defect or insufficiency was fraudulent and is injurious to the public.

Like application as to part of an invention.

XXV. Any person may, in like manner, apply to any of Her Majesty's Courts of Judicature for a rule to show cause why the Court should not declare that an exclusive privilege has not been acquired under the provisions of this Act in respect of any part of the invention, to be specified in the rule by reason of all or any of the objections following (to be specified in the rule) that is to say—

That such part of the invention is wholly distinct from the other part thereof and is of no utility, or

That such part of the invention was not, at the date of the petition for leave to file the specification, a new invention within the meaning of this Act, or

That the petitioner was not the inventor of that part of the invention, or

That that part of the invention, and the manner in which it is to be performed, is not sufficiently described and ascertained in the specification filed or the amended specification, and that such defect or insufficiency is injurious to the public.

Application by Advocate General on breach of special condition.

XXVI. It shall be lawful for the Advocate General at any of the Presidencies of Fort William in Bengal, Fort St. George, and Bombay, or any other person, by order of the Governor General in Council, apply to any of the said Courts of Judicature for a rule calling upon the petitioner, his executors, administrators, or assigns, to show cause why the question of the breach of any special condition upon which the leave to file a specification has been granted, or any other question of fact on which the revocation of the exclusive privilege by the Governor General in Council under the power hereinbefore reserved may in the judgment of the said Governor General in Council, depend, should not be tried in the form of an issue directed by the said Court; and if the rule be made absolute, the Court unless the breach or other matter of fact be admitted, may thereupon direct such issue to be tried, and certify the result of such trial to the Governor General in Council. The costs of such trial, and also the costs of any proceedings in any of the said Courts of Judicature under the provisions of this Act, shall be in the discretion of the Court.

Service of proceedings on all persons interested.

XXVII. Notice of any rule obtained or proceeding taken under either of the last three preceding Sections shall be served on all persons appearing to be proprietors or to have shares or interests in the exclusive privilege under the provisions of Section XXXV. of this Act, and it shall not be necessary to serve such notice on any other persons.

XXVIII. Any of the said Courts of Judicature, if it think

fit, may direct an issue for the trial, before the same Court or any other Court of Judicature or any principal Court of original jurisdiction in Civil cases, of any question of fact arising upon an application under Sections XXIV., XXV., or XXVI. of this Act, and such issue shall be tried accordingly in a summary manner, and, if the issue be directed to another Court, the finding shall be certified by the Court before which the same was tried, to the Court directing the issue. If the issue be directed to any Court of Judicature, the Court by which the issue is tried may, before the finding is certified, direct a new trial of such issue according to the usual course and practice of such Court. If the issue be directed to any Court other than a Court of Judicature, the finding shall not be subject to appeal, but the evidence taken upon the trial shall be recorded, and a copy thereof, certified by the Judge, shall be transmitted, together with any remarks he may think fit to make thereon, to the Court by which the issue was directed; and such Court may either act upon the decision of the Court which tried the issue, or direct a new trial if it shall appear necessary.

Supreme Court may direct issue for trial to other Court.

New trial.

XXIX. If it shall appear to any of the said Courts of Judicature at the hearing of any application under the provisions of Sections XXIV. or XXV. of this Act that, by reason of any of the objections therein mentioned, the said exclusive privilege in the invention or in any part thereof has not been acquired, the Court shall give Judgment accordingly, and shall make such order as to the costs of and consequent upon the application as it may think just; and thereupon the petitioner, his executors, administrators, and assigns shall, so long as the judgment continues in force, cease to be entitled to such exclusive privilege.

Judgment.

Costs.

XXX. If the Court, at the hearing of any such application as last aforesaid, shall think that the petitioner has, in the description of his invention in the petition or specification or amended specification (if any), included something which at the date of the petition was not new or whereof he was not the inventor, or that the specification is in any particular defective or insufficient, but that

Amendment of specification by Court.

the error, defect, or insufficiency was not fraudulently intended, the Court may adjudge the said exclusive privilege to have been acquired and to be valid, save as to the part thereof affected by such error, defect, or insufficiency, or if the Court shall think that the error, defect, or insufficiency can be amended without injury to the public, they may adjudge the exclusive privilege in the whole invention to be valid, and may, upon such terms as shall appear reasonable, order the specification to be amended in any of the said particulars; and thereupon the petitioner, his executors, administrators, or assigns shall, within the time limited by the said Court for the purpose, file a specification amended according to such order. Provided that no such amended specification shall have the effect of extending or enlarging the exclusive privilege before acquired.

Proviso.

XXXI. An exclusive privilege shall not be defeated upon the ground that the petition contains a mis-statement, unless such mis-statement was wilful or fraudulent.

Mis-statement in the petition, if not fraudulent, not to defeat the privilege.

XXXII. Whenever it shall be adjudged by any of the said Courts of Judicature that an exclusive privilege as to the whole or any part of an invention has not been acquired, the said Secretary to the Government of India shall, upon the production of the judgment or order, cause an entry thereof to be made in the said book hereinbefore directed to be kept, and shall cause a reference to such entry to be made in the margin of the entry of the specification contained in such book.

Entry in registry book of judgment &c. declaring privilege not to have been acquired.

XXXIII. If, upon proceedings instituted within two years from the date of a petition to file a specification, the actual inventor shall prove to the satisfaction of the principal Court having jurisdiction in Civil cases within the local limits of whose jurisdiction the defendant shall reside as a fixed inhabitant, that the petitioner was not the actual inventor, and that at the time of the petition he knew or had good reason to believe that the knowledge of the invention was obtained by himself or by some other person surreptitiously or in fraud of the actual inventor, or by means of a communication made in confidence by the actual inventor to him or to any person through whom he de-

In what case actual inventor entitled to assignment of an exclusive privilege fraudulently obtained.

rived such knowledge, the Court may compel the petitioner to assign to the actual inventor any exclusive privilege obtained under this Act and to account for and pay over the profits thereof.

XXXIV. In any action for the infringement of such exclusive privilege, the plaintiff shall deliver with his plaint particulars of the breaches complained of in the said action; and the defendant shall deliver a written statement of the particulars of the grounds (if any) upon which he means to contend that the plaintiff is not entitled to an exclusive privilege in the invention. In like manner, upon any application to any of the said Courts of Judicature under Sections XXIV., XXV., or XXVI. of this Act, the applicant shall deliver particulars of the objections on which he means to rely. At the trial of any such action or issue, no evidence shall be allowed to be given in support of any alleged infringement or of any objection impeaching the validity of such exclusive privilege which shall not be contained in the particulars delivered as aforesaid. If it be alleged that the invention was publicly known or used prior to the date of the petition for leave to file such specification, the places where and the manner in which the invention was so publicly known or used shall be stated in such particulars. Provided always that it shall be lawful for any Court in which the action or proceeding is pending, or in which the issue is tried, to allow the plaintiff or defendant respectively to amend the particulars delivered as aforesaid upon such terms as shall seem fit.

Particulars to be delivered.

XXXV. A book shall be kept in the Office of the Secretary to the Government of India in the Home Department (such book to be open to inspection without fee) wherein every person filing a specification under this Act, or any person to whom the exclusive privilege may be assigned, shall cause to be stated some place in India where service of any rule or proceedings for the purpose of cancelling or revoking his exclusive privilege may be made, and shall cause a reference to such entry to be made in the margin of the entry of the specification, and may from time to time cause any other place in India to be substituted by a similar entry and reference. All such rules and proceedings as aforesaid shall be deemed sufficiently served if a copy thereof be left at the place entered in such book or (if any other place be substituted for the same by entry in the said

Service of Proceedings.

book) at the place last substituted, by delivering the same to any person resident at, or in charge of, such place: or, if there be no person resident at, or in charge of such place, or if such place be not within the local limits of the jurisdiction of the Court, by causing such rule or proceeding to be sent by Post by a registered letter directed to such person at such place; and if any such person shall neglect to make or cause to be made such entry, the service of such rule or proceeding may be effected by affixing a copy thereof to some conspicuous part of the Court-house or in such other manner as the Court may direct.

Act VI. of 1856 to have effect in respect of certain specifications filed and acts done.

XXXVI. Act VI. of 1856 shall be of the same force and effect in respect to every petition and specification filed under the provisions thereof before the Act was repealed, and in regard to all proceedings consequent thereon or in relation thereto, and for the purpose of every thing done under that Act while it continued in force, as if previously to the passing of the said Act the sanction of Her Majesty to the passing thereof had been obtained and signified in pursuance of the statute passed in the seventeenth year of the reign of Her Majesty, entitled "An Act to provide for the Government of India," and as if the said Act had not been repealed; and the term of every exclusive privilege obtained under the said Act is hereby extended and shall continue until the expiration of fourteen years from the time of the passing of this Act. No exclusive privilege obtained under the said Act by an importer not being the actual inventor shall cease to have effect by virtue of the provisions of Section XVI. of the said Act if the invention be put in practice in India within the period of two years from the time of the passing of this Act.

Stamp on petition.

XXXVII. Every petition for leave to file a specification under the provisions of this Act, or for the extension of the term of an exclusive privilege, shall be written or printed on stamped paper of the value of one hundred Rupees.

Interpretation.

XXXVIII. In the construction of this Act, the following words and expressions shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction.

Words importing the singular number shall include the plural

Number. number, and words importing the plural number shall include the singular number.

Gendor. Words importing the masculine gender shall include females.

"Invention." The word "invention" shall include an improvement.

"Manufacture." The word "manufacture" shall be deemed to include any art, process, or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture.

"Printed." The word "printed" shall include "lithographed."

"Inventor" and "actual inventor." The words "inventor" and "actual inventor" shall include the executors, administrators, or assigns of an inventor or actual inventor as the case may be.

"Assigns." The word "assigns" shall include grantees of the sole use or benefit in India of an invention, or of the sole use of an exclusive privilege for a limited time.

"India." The word "India" shall mean the territories which are or may become vested in Her Majesty by the Statute 21 and 22 Vic. c. 106, entitled "an Act for the better Government of Inda."

"Governor General in Council. The words "Governor General in Council" shall include the "President in Council."

"Secretary to the Government of India. The words "Secretary to the Government of India" shall include any Under Secretary to the said Government.

"Her Majesty's Courts of Judicature." "Courts of Judicature." The expressions "Her Majesty's Courts of Judicature" and "Courts of Judicature" shall mean the Courts established by Royal Charter.

SCHEDULE OF FORMS.

FORM OF PETITION *(see Section I.)*

TO THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

The petition of *(here insert name, addition, and place of residence)* for leave to file a specification under Act No. XV. of 1859.

SHEWETH,

That your petitioner is in possession of an invention for *(state the title of the invention,)* which invention he believes will be of public utility; that he is the inventor thereof *(or, as the case may be, the assignee or the executor or administrator of the inventor)*; and that the same is not publicly known or used in India or in any part of the United Kingdom of Great Britain and Ireland to the best of his knowledge and belief.

The following is a description of the invention *(here describe it.)*

Your petitioner therefore prays for leave to file a specification of the said invention pursuant to the provisions of Act No. XV. of 1859.

And your petitioner, &c.,

(Signed)

The day of

FORM OF DECLARATION TO ACCOMPANY PETITION.

(See Section VII.)

I *(here insert name, addition, and place of residence)* do solemnly and sincerely declare that I am in possession of an invention for *(state the title of the invention as in the petition)*; that I believe the said invention will be of public utility; that I am the inventor thereof *(or, as the case may be, the assignee or executor or administrator of the inventor)*; and that the same is not publicly known or used in India or in any part of the United Kingdom of Great Britain and Ireland to the best of my knowledge and belief; and that, to the best of my knowledge and belief, my said inventor is truly described in my petition for leave to file a specification thereof.

The day of

(Signed)

FORM OF DECLARATION TO ACCOMPANY SPECIFICATION.

(See Section VII.*)*

I *(here insert name, addition, and place of residence)* do solemnly and sincerely declare that I am in possession of an invention for *(state the nature of the invention,)* which invention I believe will be of public utility; that I am the inventor thereof *(or, as the case may be, the assignee or executor or ad-*

ministrator of the inventor) and that the same is not publicly known or used in India or in any part of the United Kingdom of Great Britain and Ireland to the best of my knowledge and belief; and that, to the best of my belief, the instrument in writing under my hand hereunto annexed particularly describes and ascertains the nature of the said invention and in what manner the same is to be performed.

The day of

(Signed)

FORM OF DECLARATION BY AGENT WHEN AN INVENTOR IS ABSENT FROM INDIA.

(See Section VII.)

I of

do solemnly and sincerely declare that I have been appointed by the said

his Agent for the purpose of

; and I verily believe that the declaration purporting to be the declaration of the said marked ( ) was signed by him, and that the contents thereof are true.

The day of

(Signed)———

FORM OF PETITION—(*See Section* XX.)

That your petitioner (*or, as the case may be, that A. B. of whom your petitioner is the assignee or executor or administrator*) has obtained Her Majesty's Letters Patent dated the day of for *(state the title of the invention,)* and that such Letters Patent are to continue in force for years. That your petitioner believes that the said invention is not now and has not hitherto been publicly known or used in India.

The following is a description of the invention *(here describe it.)*

Your petitioner therefore prays for leave to file a specification of the said invention pursuant to the provisions of Act No. XV. of 1859.

And your petitioner, &c.

(Signed)

The day of

NABOB OF THE CARNATIC.

ACT NO. XVI. OF 1859.

[*Passed on the* 18*th June*, 1859.

Recites doubts as to operation of Act XXX. 1858, s. 14.

1. Declares that no debt of the Prince contracted during his infancy shall be deemed within the said Section unless proved to be necessary, &c. or such proof is dispensed with by government.

2. Empowers the Court to award costs under Act XXX. 1858, s. 22.

3. Declares that the said Act was not intended to exclude an appeal to H. M. in C.

An Act to explain Act XXX. of 1858 (to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic.)

Preamble.

Whereas doubts have arisen whether certain debts contracted by Prince Azeem Jah Bahadoor during the infancy of the late Nabob of the Carnatic were debts or claims within the meaning of Section XIV. or any subsequent Section of Act XXX. of 1858; and whereas it is expedient to remove such doubts as well as other doubts which exist as to the power of the Supreme Court of Judicature at Madras to award costs in investigations under Section XXII. of the said Act, and as to whether cases so investigated are appealable to Her Majesty in Council; It is declared and enacted as follows :—

Debts contracted by Prince Azeem Jah Bahadoor during the Minority of the Nabob.

I. No debt contracted by the said Prince Azeem Jah Bahadoor during the minority of the said late Nabob shall be deemed a debt or claim within the meaning of the said Section XIV. or any subsequent Section of the said Act, unless it shall be proved that it was necessary and proper that such debt should be incurred on behalf or for the use of the said Nabob, and that the same was so contracted; or unless the Governor in Council of Fort Saint George shall dispense with such proof.

Power to award costs.

II. Upon any investigation under Section XXII. of the said Act, it shall be lawful for the Court, except as otherwise provided by the said Act, to award costs to either party and to cause the same to be levied in the same manner as costs in an ordinary suit.

III. It is hereby declared that it was not the intention of the said Act to exclude from appeal to Her Majesty in Council any awards, orders or decisions of the said Supreme Court made upon any investigation under Section XXII. as aforesaid.

Appeal to the Queen in Council.

BOMBAY ISLAND.--ABKAREE.

ACT NO. XVII. OF 1859.

[*Passed on the* 16*th July,* 1859.

Recites expediency of increasing the taxes on specified licenses and of prohibiting manufacture of spirits except from specified juice.

1. Repeals Bombay R. 10, 1833.

2. Abkaree revenue to be conducted by Collector or under his farmer.

3, 4. Prohibits manufacture except from juice of Brab or Cocoanut tree, and the mixture of other juice; and (4) person contravening this law to be liable to penalty, &c. and to forfeit implements, &c.

5, 6. Prohibits manufacture and trade, except under license; and (6) persons contravening the law, to be liable to penalty, &c. and forfeit implements, &c.

7. Collector, with sanction of Government, may prescribe rules respecting grant of licenses and use of stills, &c.

8. License shall specify the number, &c. of trees to be drawn, place at which manufacture may be carried on and other specified particulars.

9. Amount of fee on duty to be fixed by Collector.

10. Arrear of fee on duty may be recovered by distress and sale of goods, &c.

11. Any person drawing liquor, &c. contrary to terms of license to be liable to specified penalty.

12. Collector may cancel licenses for non-payment of fee or other breach of condition.

13. Every fine or penalty may be recovered by summary proceeding before J. P. &c.

14. Fines and confiscations to belong to Government but a moiety of the fine may be distributed as reward of informers, &c.

15. Interprets the words "Island of Bombay."

An Act to amend the law for the realization of Revenue from Abkaree in the Island of Bombay.

Whereas it is expedient to raise the taxes chargeable in respect of licenses for drawing liquor from Cocoanut, Brab or Date Trees in the Island of Bombay, and to prohibit the manufacture in the Island of Bombay of any

Preamble.

spirituous liquor except from the juice of Cocoanut Brab or Date Trees; It is enacted as follows:—

Repeal of Regulation.

I. From and after the commencement of this Act, Regulation X. 1833 of the Bombay Code *(prescribing Rules for the realization of revenue from Abkaree in the Island of Bombay)* shall be repealed, except as to any act or offence which shall have been done or committed, or to any money which shall have become due, or to any fine or penalty which shall have been incurred, or to any proceedings which shall have been commenced before this Act shall come into operation.

Collection of Abkaree Revenue.

II. The collection of Revenue from the Abkaree in the Island of Bombay shall be conducted by the Collector of Bombay, or under a farming management subject to the control of the Collector.

Manufacture of spirituous liquors in Bombay.

III. No spirituous liquor whatever shall be manufactured in any part of the Island of Bombay except from the juice drawn from Cocoanut Brab or Date Trees; and in the manufacture of spirituous liquor from the juice of Cocoanut Brab or Date Trees, no Moura Dates Rice or other material whatever shall be used.

Penalty for prohibited manufacture.

IV. Any person, who shall manufacture spirituous liquor contrary to any of the provisions of the preceding Section shall, on conviction before a Police Magistrate or Justice of the Peace, be liable to a penalty not exceeding five hundred Rupees for each offence; and all stills and other implements and all materials whatever used in such illicit manufacture, shall be seized and confiscated.

License for making spirituous liquors.

V. No person shall draw liquor toddy or juice from any Cocoanut Brab or Date Tree, or make or distil any spirituous liquors from the juice of such trees, or use, keep or have in his possession any still or other utensil or apparatus for making or distilling any spirituous liquors in the Island of Bombay, except under the authority of a license from the Collector, to be granted in such form, and for such period, and subject to the payment of such fee or duty as the Governor of Bombay in Council may from time to time appoint.

VI. Any person who shall contravene any of the provisions of

Penalty for making spirituous liquors without license.

the preceding Section shall be liable to a penalty not exceeding five hundred Rupees for each offence, and all stills and other implements and other materials used in such illicit manufacture shall be seized and confiscated.

Grant of license.

VII. The Collector with the sanction of Government may prescribe such rules relative to the granting of licenses, to the number, size and description of the stills, to the situation where the stills may be kept or worked, and to the inspection and supervision of the distillery or other place where such stills may be kept or worked, as may from time to time be deemed expedient.

Form of license.

VIII. Every license, when granted, shall specify the number and description of Trees to be drawn, the place at which the liquor is to be distilled or manufactured, and where the still or other apparatus is to be kept or used, the length of time for which such license is to be in force, the amount of fee or duty to be levied in respect of each Tree included in the license, and any other conditions or terms which the Governor of Bombay in Council may from time to time deem it expedient to require.

Fee for license.

IX. The fee or duty aforesaid shall be paid at such period as the Collector may deem expedient, the same being specified in each respective license.

Recovery of arrears.

X. The Collector may recover any arrear of fee or duty due on account of any license granted under this Act, by distress or sale of the goods and chattels of the person from whom the same is due, or by any other process which now is or hereafter may be in force for the recovery of arrears of rent or revenue due from tenants or farmers of land within the Island of Bombay.

Penalty for drawing liquor without license.

XI. Any person who shall draw any liquor, toddy or juice from a Cocoanut, Brab or Date Tree in the Island of Bombay not included in such license as aforesaid, or contrary to the terms of the license granted in respect of any such tree, shall be liable to a penalty not exceeding one hundred Rupees for each offence.

XII. The Collector may cancel any license granted under this

Revocation of license.

Act if the fee or duty therein specified be not duly paid or in case of the violation of any other condition thereof.

Adjudication and recovery of fines and confiscations.

XIII. Every fine or penalty leviable under this Act shall be recovered by summary proceedings before any Justice of the Peace or Police Magistrate for the Town and Island of Bombay upon information exhibited by or by order of the Collector, and all confiscations under this Act shall be adjudicated such by Magistrate or Justice and sold under his warrant.

Appropriation of fines and confiscations.

XIV. All fines and confiscations levied under this Act shall belong to Government, but a moiety of any fine may at the discretion of the Collector be paid to the person, or divided among the persons if more than one, through whose means the offence may have been detected, in such proportions as the Collector may think fit.

Interpretation.

XV. The words "Island of Bombay" in this Act shall include all places within the local limits of the jurisdiction of Her Majesty's Supreme Court of Judicature at Bombay.

WORDS, MAGISTRATE AND JUSTICE OF THE PEACE INTERPRETED.

ACT No. XVIII. OF 1859.

[Passed on the 25th July, 1859.

Recites expediency of amending the law relating to offences made punishable on conviction before a Magistrate.

1. If any offence committed in the Mofussil is, by any Act heretofore passed, made punishable by a Magistrate, the same may be punishable by Supreme Court if committed by European British Subject.

2. Same, if such offence be committed within the Presidency Towns.

3. Act not to extend to any offence in which jurisdiction is expressly given to J. P. to convict.

4. The word "Magistrate" when declared to include J. P. not to give jurisdiction to punish unless offence was committed, within Presidency Town.

An Act to amend the law relating to offences declared to be punishable on conviction before a Magistrate.

Whereas it is expedient to amend the law relating to offences

Preamble.

declared to be punishable on conviction before a Magistrate; It is enacted as follows:—

British subjects how punishable for offences by law made punishable in the Mofussil upon conviction by a Magistrate.

I. If any offence which by any Act of the Governor General in Council heretofore passed is declared to be punishable upon conviction by a Magistrate shall be committed by a European British subject beyond the local limits of the jurisdiction of Her Majesty's Supreme Courts of Judicature, the offender if not otherwise punishable shall be liable, upon conviction before one of the said Supreme Courts of Judicature, to the punishment to which by such Act the offender is declared to be liable upon conviction before a Magistrate.

When such offences are committed within the local limits of the jurisdiction of Her Majesty's Courts.

II. If any offence which by any Act of the Governor General in Council heretofore passed is declared to be punishable upon conviction by a Magistrate shall be committed by any person within the local limits of the jurisdiction of the Court of Judicature established by Royal Charter, the offender if not otherwise punishable shall be liable upon conviction before such Court to the punishment to which by such Act the offender is declared to be liable upon conviction before a Magistrate.

Jurisdiction expressly given to Justice of the Peace not to be affected.

III. Nothing in this Act shall extend to any case in which jurisdiction is expressly given to a Justice of the Peace to convict the offender.

Construction of Acts which declare the word "Magistrate" to include a Justice of the Peace.

IV. Whenever in any Act heretofore passed by the Governor General in Council the word "Magistrate" is declared to include a Justice of the Peace, such Justice of the Peace shall not by virtue of such Act be deemed to have jurisdiction to punish any offence unless the same shall be committed within the local limits of the jurisdiction of any of the Courts of judicature established by Royal Charter.

ARMS AND AMMUNITION.

ACT No. XIX. OF 1859.

[*Passed on the* 12*th August*, 1859.

Continues Act XXVIII. 1857, until the end of the year 1859.

An Act to continue in force until the end of the year 1859 Act XXVIII. of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same.)

Preamble.

Whereas it is expedient that Act XXVIII. of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same,) should continue in force until the end of the year 1859; It is enacted as follows:—

Act XXVIII. of 1857 continued.

I. Act XXVIII. of 1857 shall continue in force until the end of the year 1859.

MADRAS.—THE MOPLAS OF MALABAR.

ACT No. XX. OF 1859.

[*Passed on the* 31*st August*, 1859.

1. Repeals Acts XXIII. 1854, and V. 1856.
2. Empowers the G. in C. to bring the district of Malabar by proclamation under this Act.
3. Establishes a forfeiture of property against Moplas concerned in murder or attempts to murder either as principals, accessaries or assistants in any way, and forfeiture extended to Moplas killed in the commission of the offences specified.
4. Forfeiture to extend to immovable property of offender alienated within 12 months before commission of offence.
5. Empowers Court on sentencing Mopla to death, to direct the body to be burned or buried in the Jail, &c.
6. G. in C. to have same powers in regard to Moplas charged under this Act as in regard to persons charged with offences against the State.
7. Empowers the magistrate to detain Mopla in safe custody for the orders of government, if he si within provisions of last section.
8. Any Mopla who has been proceeded against under s. 6, and shall have gone into banishment with consent of G. in C. and shall return in breach of his undertaking shall be liable to imprisonment, &c. for seven years.

9. For offences specified in s. 3, the magistrate may with the consent of the G. in C. levy a fine on the umshum, &c. to which the offender belongs or wherein he resided, &c. and such fine shall be distributed in compensation to parties aggrieved by the outrage.

10. In such cases also the umshum may be called upon to deliver up the offenders, and in default shall be liable to such fine as G. in C. may authorize.

11. Fines &c. may be levied by magistrate under summary process, and in the same manner as arrears of revenue, and no action shall be against magistrate.

12. Empowers the G. in C. to withdraw from operation of the Act any district declared subject to it.

13. Act to continue in force till end of year 1869.

An Act for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George.

Preamble.

Whereas in the District of Malabar in the Presidency of Fort St. George, murderous outrages have been frequently committed by persons of the class called Moplas, the offenders in such outrages intending therein to scrifice their own lives; and the general law of the country is not adequate to suppress such outrages: It is enacted as follows:—

Acts repealed.

I. Act XXIII. of 1854 *(for the suppression of outrages in the District of Malabar in the Presidency of Fort St. George)* and Act V. of 1856 *(to give effect to Act XXIII. of 1854 from the time of its promulgation in the District of Malabar, and to extend the application thereof in future)* are hereby repealed, except as to acts done and proceedings taken before the issue of a proclamation under the provisions of Section II. of this Act.

Governor in Council empowered to proclaim the whole or any part of Malabar to come under this Act.

II. It shall be lawful for the Governor in Council of Fort St. George, whenever he shall see fit, by a proclamation published in the Fort St. George Gazette, from time to time to declare the whole or any part or parts of the District of Malabar to be subject to the operation of all or any of the following provisions.

The property of Moplas convicted of outrages to be forfeited.

III. Any Mopla who murders or attempts to murder any person or who takes part in any outrage directed by Moplas against any persons wherein murder is committed or is attempted to be com-

mitted or is likely to be committed; and any person who shall procure or promote the commission of any such crime as aforesaid, or shall incite or encourage any other person or persons to commit the same; or who, after having committed, or having been accessary to any such crime as aforesaid, shall forcibly resist any person or persons having lawful authority to apprehend him; or who shall join or assist, or incite or encourage other persons to join or assist in such resistance, shall, on conviction thereof, be liable not only to the punishment provided by law for the offence of which he may be convicted, but also to the forfeiture of all his property, of whatever kind, to Government by the sentence of the Country by which he is tried; and whenever any person shall be killed in the act of committing any such offence as aforesaid, or being wounded and taken prisoner in the act of committing any such offence as aforesaid, shall afterwards die of his wounds, it shall be competent to the Court which would have had cognizance of the offence if the offender could have been brought to trial, to proceed, on the application of the Magistrate, to hold an inquest into the circumstances of the death of the offender; and on proof of his having been killed as aforesaid, or of his having died of wounds received as aforesaid, to adjudge that the whole of his property shall be forfeited to Government.

Also the property of persons killed in committing outrages.

IV. All immovable property of the offender which shall be alienated after the passing of this Act and before the commission of any offence specified in Section III. shall be forfeited in the same manner as if no such alienation had been made, unless the same shall have been made more than twelve months before the commission of the offence.

Immovable property of offender alienated within 12 months from passing of this Act and before commission of offences, to be forfeited.

V. If any Mopla shall be sentenced to death for any capital offence, punishable also with forfeiture of property under this Act, it shall be lawful for the Court, by which such offender is convicted, by its sentence, to direct the body of such offender to be burned or buried within the precincts of the Jail, as it shall see fit; and in like manner, if any Mopla shall be killed in the act of committing any such offence as aforesaid, or having committed any such offence as aforesaid shall be killed in

Bodies of offending Moplas sentenced to death, or killed, may be burned or buried within the precincts of the Jail.

resisting a lawful attempt to apprehend him, it shall be lawful for the Magistrate to cause the body of the person so killed to be burned or buried within the precincts of the Jail, as the said Magistrate shall see fit.

Powers of Governor in Council as to the confinement or trial of persons under this Act.

VI. The Governor in Council shall have, with respect to the confinement or trial of any person charged with or suspect of an intention to commit any offence punishable under this Act, the powers which are vested in him by any law regarding the confinement or trial of persons charged with or suspected of State offences; and the provisions of any such law shall be applicable to all cases in which the Governor in Council shall proceed under the authority of this Section.

Magistrate how to act in respect to persons against whom he thinks there are grounds of proceeding.

VII. The Magistrate of the District may cause any Mopla or other person, against whom there are in his judgment grounds of proceeding under the last Section to be apprehended, and after such enquiry as he may think necessary, may detain such Mopla or other person in safe custody, until he shall have received the orders of the Governor in Council, to whom in all such cases he shall report his proceedings without unnecessary delay.

Penalty for remaining or returning within forbidden limits.

VIII. If, with the previous consent of the Governor in Council, any person, against whom the Governor in Council shall think fit to proceed under Section VI. shall undertake, in consideration of the suspension of such proceedings, to depart within a specified period from within the limits of the Continent of India or of any part thereof, and shall in breach of his said undertaking, and without the permission of the Governor in Council, remain or return within such limits, he shall be liable to be punished with imprisonment, with or without hard labor, for a period which may extend to seven years, or with fine, or both.

Levy of compensation or fine.

IX. When any such outrage, as is specified in Section III. of this Act, the same being punishable under this Act, shall after such proclamation as aforesaid, have been committed by any Mopla or Moplas, it shall be lawful for the Magistrate, with the sanction of the Governor in Council, to levy such sum of money as the Governor in Council shall author-

ize, from all the Moplas within the umshum or the several umshums to which the perpetrator or perpetrators, or any one of such perpetrators, of such outrages, shall be found to belong, or wherein any such perpetrator shall have been resident at the time of the commission of the outrage and also within the umshum in which the outrage shall have been committed; and the said Magistrate shall assess the proportions in which the said sum shall be payable upon the several heads of families of Moplas within such umshum or umshums, according to his judgment of their respective means; and the said Magistrate shall appropriate the sum so levied as follows, that is to say, in the first place, to the compensation of the parties aggrieved by such outrages, including therein compensation to the family of any person dying by any such outrage for the pecuniary loss occasioned or likely to be occasioned by such death; and, subject to such compensation, to the use of the Government.

Penalty for Mopla inhabitants of any umshum refusing to deliver up an offender.

X. Whenever any such outrage as is specified in Section III. of this Act, the same being punishable under this Act, shall have been committed by any Mopla or Moplas, it shall be lawful for the Magistrate to call upon the Mopla inhabitants of the umshum or umshums to which the perpetrator or perpetrators, or any one of such perpetrators of such outrage shall be found to belong, or wherein any such perpetrator shall have been resident at the time of the commission of the outrage, or wherein any such perpetrator shall, after the perpetration of any such outrage, be found, to deliver up such perpetrator or perpetrators, and on the failure of such Mopla inhabitants to comply with such call so made upon them by the Magistrate, it shall be lawful for the Magistrate, with the sanction of the Governor in Council, to levy from such Mopla inhabitants such sum of money as the Governor in Council shall authorize as prescribed in the last preceding Section of this Act, and all sums so levied shall be appropriated in the manner prescribed in that Section.

Fines, &c. how to be levied.

XI. All fines and pecuniary liabilities incurred under this Act may be levied by a Magistrate under summary process, in the same manner as the public revenue may be realized by a Collector; and no action shall lie in any Civil Court against the Magistrate in respect of any fine im-

posed, or any assessment made under this Act, or in respect of the levy of any portion of such fine from the person or persons upon whom the same shall have been assessed.

Parts of District may be withdrawn from the operation of the Act, and again made subject to it.

XII. It shall be lawful for the Governor in Council, by such proclamation as aforesaid, from time to time, to withdraw from the operation of the provisions of this Act any part or parts of the said District which he may previously have declared to be subject thereto; and in like manner, as occasion shall require, to subject the same part or parts again to the operation of such provisions, or of any of them.

Duration of Act.

XIII. The provisions of this Act shall continue in force until the end of the year 1869.

THE GOVERNOR GENERAL.

ACT No. XXI. OF 1859.

[*Passed on the 3rd Sept.* 1859.

Recites expediency of G. G. visiting the N. W. Ps. and other parts of India unaccompanied by member of Council.

1. Empowers the G. G. alone to exercise all the powers which might be exercised by the G. G. in C. as he may deem expedient.

2. Legalizes the exercise by the President in Council of all powers vested in the G. G in C.

3. Act to commence on departure of G. G. from Calcutta.

An Act for providing for the exercise of certain powers by the Governor General during his absence from his Council.

Preamble.

Whereas the Governor General in Council has declared that it is expedient that the Governor General should visit the North-Western Provinces of the Presidency of Fort William in Bengal, and other parts of India, unaccompanied by any Member of his Council; It is enacted as follows:—

Powers to be exercised by the Governor General during his absence from Council.

I. During the absence of the Governor General from his Council, it shall be lawful for the Governor General alone to exercise all the powers which might be exercised by the Governor General in Council, in every case in which the said Governor General may think it expedient to exercise those powers.

II. All powers vested in the Governor General in Council by any Act of the Government of India, may be lawfully exercised by the President in Council.

Powers of the President in Council.

III. This Act shall commence from the day on which it shall be notified by an order published in the Official Gazette, that the Governor General has quitted Calcutta for the purpose of so proceeding as aforesaid; and shall not continue in force for a longer period than seven months.

Commencement and duration of Act.

BOMBAY.--CUSTOMS ON SALT.

ACT NO. XXII. OF 1859.

[*Passed on the 3rd Sept.* 1859.

1. Repeals Act I. 1852 s. 20, and schedule A. as respects the duty on the import of Salt.

2. Extends to the Salt duty under this Act, the provisions regarding the duty imposed by the said Schedule.

3. Adds to the powers given to the G. in C. by Act III. 1852, s. 1, the power of fixing the rate of duty on Spirits.

4. Act to be construed as part of previous specified Acts on same subject.

Schedule. Salt not covered by a pass 1 rupee per maund.

An Act to amend Act I. of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay.)

Whereas it is expedient to amend Act I. of 1852 (*for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay*); It is enacted as follows:—

Preamble.

I. Section XX. of Act I. of 1852, and so much of Schedule A annexed to the said Act as prescribes the rate of Duty to be charged on Salt imported by Sea into any Port of the Presidency of Bombay, are repealed.

Part of Act I. of 1852 repealed.

II. All the provisions now in force of the above-mentioned Act which have reference to the Customs Duty now charged and leviable on Salt imported by Sea into any Port of the Presidency of Bombay, shall be

Duty on Salt imported by Sea.

taken to have reference to the Duty prescribed in the Schedule annexed to this Act.

Duty on Spirits exported from any Port in India and imported into any Bombay Port.

III. Spirits exported from any Port within the British Territories in India, and imported at any Port subordinate to the Government of Bombay, shall be liable on importation to the same rate of duty as the Governor in Council of Bombay may from time to time impose under Act III. of 1852 or any future enactment on Spirits manufactured within the Presidency of Bombay. Provided always that, if the said Spirit be accompanied by a document signed by competent authority, certifying that a Duty whether of Customs or otherwise has been paid on the said Spirit within the British Territories in India, credit shall be allowed for the sum paid in settling the Customs at the Port of import, and if such sum equal or exceed the full amount leviable on import, then the Spirits on which such Duty has been paid shall be admitted to free Duty.

Construction of Act.

IV. This Act shall be construed as part of the said Act I. of 1852; and any Act subsequent to Act I. of 1852 which refers to that Act shall be construed to refer to that Act as hereby altered. And any Act which refers to Section XX. of Act I. of 1852 shall, as to all matters arising after the passing of this Act, have the same effect as if it referred to Section III. of this Act.

SCHEDULE.

Rate of Duty to be charged on Salt imported by Sea into any Port of the Presidency of Bombay from any Port or place not subject to the Government of India, or from Aden, or from any Port or place in the Straits of Malacca.

Salt not covered by a Pass	1 Rupee per Indian Md.

MADRAS AND BOMBAY.--LAND CUSTOMS.

ACT No. XXIII. OF 1859.

[*Passed on the 3rd September,* 1859.

Recites expediency of fixing duties of land customs.

1. Repeals Act VI. 1844, s. 6, and Act XXIX. 1857, s. 2, except as to Salt and Opium.

2, 3. Extends to imports and exports into foreign Settlement (2) by sea (3) by land the Schedules A. and B. of Act VII. 1859.

An Act to alter the rates of duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay respectively.

Preamble.

Whereas it is expedient to fix the duties of Land Customs on goods passing into or from the Presidency of Fort Saint George or the Presidency of Bombay from or into Foreign Settlements on the line of Coast at the same rates as the duties of Sea Customs specified in Schedules A and B annexed to Act VII. of 1859; It is enacted as follows:—

Laws repealed.

I. Section VI. of Act VI. of 1844 (*for revising the duties on imports and exports in the Presidency of Fort Saint George*) and Section II. of Act XXIX. of 1857 (*to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay*) and hereby repealed, except so far as they respectively relate to Salt or Opium which shall remain subject to the same rates of duty or shall be prohibited without a pass, as the case may be, as if this Act had not been passed.

Exception.

Duties of Customs on goods passing by land into or out of certain Foreign Settlements situate within the limits of the Madras Presidency.

II. Duties of Customs shall be levied on goods passing by land into or out of Foreign Settlements situate on the line of Coast within the limits of the Presidency of Fort Saint George, at the rates prescribed in Schedules A and B of Act VII. of 1859 (*to alter the Duties of Customs on goods imported or exported by Sea*). And all the provisions of Act VI. of 1844 now in force relating to the rates of duty mentioned or referred to by Section VI. of that Act, are hereby declared to apply to the rates of duty mentioned in Schedules A

and B of the said Act VII. of 1859, as if such last mentioned rates had been specially mentioned in that Section.

Duties of Customs on goods passing by land into or out of certain Foreign Settlements situate within the limits of the Bombay Presidency.

III. Duties of Customs shall be levied on goods passing by land into or out of Foreign Settlements situate on the line of Coast within the limits of the Presidency of Bombay, at the rates prescribed in Schedules A and B of the said Act VII. of 1859, and all the provisions of Act XXIX. of 1857, now in force, relating to the rates of duty referred to by Section II. of that Act, are hereby declared to apply to the rates of duty mentioned in Schedules A and B of the said Act VII. of 1859, as if such last mentioned rates had been specially mentioned in that Section.

MADRAS.--POLICE.

ACT No. XXIV. OF 1859.

[*Passed on the 6th Sept.* 1859.

Recites the expediency of improving the country Police.

1. Explains the words Magistrate, Subordinate, Police, General Police, District, Property, Person, Cattle, &c.

2, 3. Repeals Regulations and Acts by reference to Schedule; (3) saving powers of appointment given to Magistrates by specified Regulation.

4. Vests superintendence of the Police in the G. in C.

5. Vests the administration of the Police in an Inspector General of Police.

6. Continues to new Police the existing powers of Police under old law.

7. Directs what powers the Inspector General shall have.

8. The entire establishment of Police to be one Police force, formally enrolled, &c.

9. Inspector-General to frame orders and regulations for the government of the force, subject to the approval of the G. in C.

10, 11. The appointment of all Police to rest with the Inspector G. under rules to be sanctioned by G. in C.; (11) and person appointed to have certificate.

12. Directs a deduction to be made from pay, to form, together with other specified means, a "Police Superannuation Fund."

13, 14, 15. Empowers the I. G. &c. to strengthen the police in any district in case of emergency; (14) especially in the neighbourhood of Railway, Canal or other public works and to charge the expense on the Railway, Canal or other Company; (15) the money so raised to be paid into a separate account called the "General Police Fund."

16, 17. Empowers Police Officer not below the rank of Inspector, to apply to Magistrate for appointment of special Police Officers, and directs who they may be and (17) what their powers and liabilities.

18. Person appointed a special, and refusing to serve to be liable to penalty.

19. Police Officer not to resign office without leave.

20. Persons not in, assuming function of Police, or feigning by specified means to be in Police, to be liable to penalty.

21. Police Officers to be considered as always on duty.

22, 23, 24. Specifies offences for which Police may arrest without warrant; persons (23) so arrested to be taken forthwith to station; and (24) be released on bail in specified cases.

25, 26. Empowers Officers at Station to bind over parties and witnesses and (26) prescribes the terms of the Bond.

27. Empowers Magistrate to remand the accused.

28. Empowers the Police without warrant to enter and inspect all drinking shops, gaming houses, &c. and specified suspected places.

29. Officer not below specified grade to be Inspector of weights, &c.

30. Police not to receive complaint of petty offences, and may refuse to receive charge of grave offences.

31. Police may apply for warrant in case of certain offences and charges.

32. Summons, warrants and other criminal process to be directed to Police only.

33, 34. Directs how warrants are to be carried into execution; and (34) how summons and other service process are to be served.

35. Empowers Magistrate to issue warrant without Summons, whenever positively necessary to enforce attendance.

36, 37, 38. Directs what Police shall do on execution of warrant; and (38) prohibits unnecessary restraint.

39, 40, 41. Authorizes Officer holding arrest warrant to break open doors &c.; and (40) to enter Zenanah after specified precautions and notice, and (41) directs that the arrested is to be forthwith brought before Magistrate.

42. Prohibits Police from extracting disclosures from prisoner, except of his free will.

43. Entitles Police to demand aid if necessary.

44, 45, 46. Provides punishment for offences by the Police; and (45) against the receipt of gratuities; and (46) extortion.

47. Provides punishment for resistance to and other offences against the Police.

48. Provides punishment for specified nuisances in streets, roads, &c. and slaughtering Cattle; and cruelty to animals, and blocking up ways, and keeping stalls on ways; and throwing dirt, &c. into street; and being found drunk, and indecently exposing the person; and neglecting to fence in dangerous places.

49. Empowers Superior Police Officers to make regulations for assemblies and processions in the roads, &c.

50. Restrains power of Magistrate under this Act to its ordinary limits

and directs that all Police above Privates shall only be tried by European functionary.

51. Jurisdiction under other Law retained for prosecution of offences against this Act.

52. Fines may be recovered by distress and sale.

53, 54. Proceedings against the Police for acts done under this Act to be brought within three months, and notice to be previously given; and (54) Defendant may plead Magistrate's warrant, &c.

55. Act to be brought into operation by notification in Gazette.

Schedule of repealed Regulations and Acts.

An Act for the better regulation of the Police within the territories subject to the Presidency of Fort St. George.

Preamble.

Whereas it is expedient to make the Police force throughout the Madras Presidency a more efficient instrument at the disposal of the Magistrate for the prevention and detection of crime, and to re-organize the Police Force and improve the condition of the Village Police: it is enacted as follows:—

Interpretation.

I. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, (that is to say).

"Magistrate."

The word "Magistrate" shall include all persons, within their respective jurisdictions, exercising all or any of the powers of a Magistrate.

"Subordinate."

The word "Subordinate," as applied to Police functionaries, shall mean District Superintendents and their Assistants.

"Police."

The word "Police" shall include General and Village Police, Cuttoobadies, Kavilgars, and all other persons, by whatever name known, who exercise any Police functions throughout the Madras Presidency.

"General Police District."

The expression "General Police District" shall embrace all Districts to which the operation of this Act shall be extended.

"Property."

The word "Property" shall include any chattel, money, or valuable security.

Number.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Gender. Words importing the masculine gender shall include females.

"Person." The word "person" shall include company or corporation.

"Month." The word "month" shall mean calendar month.

"Cattle." The word "cattle" shall, besides horned cattle, include Elephants, Camels, Horses, Asses, Mules, Sheep, Goats and Swine.

Laws repealed. II. The several Regulations and Acts mentioned in the Schedule hereunto annexed are hereby repealed, and amended to the extent and in the manner therein set forth, within the limits of the General Police District, except so far as they repeal the whole or any part of any other Regulation or Act; and except as to any act or offence which shall have been done or committed, or to any fine or penalty which shall have been incurred or to any proceedings which shall have been commenced, before this Act shall come into operation: provided also that nothing in this Section shall be construed to affect any judical function or jurisdiction, original or appellate, which by any existing law may be exercised by any of the Officers mentioned in the enactments above repealed.

Jurisdiction of Officers appointed under Regulation XI. 1816. III. Nothing contained in this Act shall affect the powers of appointment given to Magistrates by Section XL. of Regulation XI. 1816 of the Madras Code or the jurisdiction or functions of Officers appointed under such powers, save only that no Officer so appointed shall be competent to exercise any of the functions or duties of Executive Police Officers.

Superintendence vested in Governor in Council. IV. The superintendence of the Police throughout the General Police District shall vest in, and be exercised by the Governor in Council, and, except as authorized by him under the provisions of this Act, no person, Officer, or Court shall be empowered to appoint, supersede, or control any Police functionary, any Regulation, Act or usage to the contrary notwithstanding.

Inspector-General of Police, &c. V. The administration of the Police throughout the General Police District shall be vested in an Officer to be styled the Inspector-General of Police for the Presidency of Madras; and in such Subordinates as to the

Governor in Council shall seem fit, who shall from time to time be appointed by the Governor in Council, and may be removed by the same authority, and who shall receive such salary as the Governor General of India in Council shall allow.

Powers of Police, &c.

VI. All powers not inconsistent with the provisions of this Act which up to the passing of this Act belonged by law to the existing Police authorities shall be vested in the Police authorities appointed under this Act. Provided always that no Police functionary so appointed shall possess or exercise any Judicial or Revenue authority.

Inspector-General to be appointed a Magistrate.

To act as such under the orders of Government.

District Superintendent may be appointed a Magistrate.

In what cases he may act in that capacity.

VII. The Inspector-General of Police shall be appointed a Justice of the Peace; he shall also have the full powers of a Magistrate throughout the General Police District, but shall exercise these powers subject to such orders as may from time to time be issued by the Governor in Council. The Governor in Council may vest any District Superintendent of Police with all or any of the powers of a Magistrate within such limits as he may deem proper; but such Superintendent shall exercise the powers with which he shall be so invested only so far as may be necessary for the preservation of the peace, the prevention of crime, and the detection, apprehension, and detention of offenders in order to their being brought before a Magistrate, and as far as may be necessary for the performance of the duties assigned to him by this Act.

Constitution of the Force.

VIII. The entire Police establishment of the Madras Presidency shall for the purposes of this Act be deemed to be one Police Force, and shall be formally enrolled, and shall consist of such number of Officers and men, and shall be otherwise constituted in such manner, as shall be from time to time ordered by the Governor in Council with the sanction of the Governor General of India in Council.

Inspector-General to control Force and make rules.

IX. The Inspector-General may from time to time, subject to the approval of the Governor in Council, frame such orders and regulations as he shall deem expedient, relative to the general government and distribution of the Force, the places of residence,

the classification, rank, distribution, and particular service of the Members thereof; their inspection; the description of arms, accoutrements, and other necessaries, to be furnished to them; to the collecting and communicating intelligence and information; and all such other orders and regulations relative to the said Police Force as the said Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect, and for rendering such Force efficient in the discharge of all its duties.

Inspector-General to appoint and dismiss.

X. The appointment of all Police Officers shall under such rules as the Governor in Council shall from time to time sanction, rest with the Inspector-General of police and the Deputy Superintendents, who may under such rules as aforesaid at any time dismiss, suspend, or fine to any amount not exceeding one month's pay, any Police Officer whom they shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same.

Police Officers to recive certificates of Office.

XI. Every person so appointed shall receive on his enrolment a certificate (A) under the seal of the Inspector-General, by virtue of which he shall be vested with the powers, functions and privileges of a Police Officer. Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed, or otherwise removed from employment in the Police Force, and shall thereupon be immediately surrendered to his superior Officer, or other person empowered to receive it.

Police Superannuation Fund.

XII. There shall be deducted from the pay of every Police Officer of a class not entitled to the benefit of the Uncovenanted Service Pension Rules, a sum after such rate as the Governor in Council shall direct, not being a greater rate than one anna in the Rupee; which sum so deducted and also the monies accruing from stoppage from the pay of Police Officers during absence from sickness or other cause, and fines imposed on Police Officers for misconduct, and from fines imposed by Magistrates and other upon drunken persons, or for assaults upon Police Officers, and all monies arising from the sale of worn or cast-off clothing, or other articles supplied for the use of the Police, or from any other miscellaneous ources which shall be permitted by the Governor in Council, shall from time to time be invested in such manner and in such

securities as the Governor in Council may direct, and the interest and dividends thereof, or so much of the same as shall not be required for the purposes herein mentioned, shall be likewise invested as aforesaid, and accumulate, so as to form a Fund to be called "The Police Superannuation Fund;" and shall be applied from time to time to the payment of superannuation or retiring allowances, or gratuities, under such rules as may be passed by the said Governor in Council: provided always that any Police Officer may be dismissed or removed without superannuation allowance; and that no Police Officer shall be entitled of right to any allowance from this Fund; or shall retain any right to a refund of any deduction made from his pay while he may have been a Police Officer.

Proviso.

XXIII. It shall be lawful for the Inspector-General of Police, or any District Superintendent, if they shall think fit, on application of any person showing the necessity thereof to depute any additional number of Police Officers to keep the peace at any place within the General Police District, at the charge of the person making the application, but subject to the orders of the said Inspector General or District Superintendent and for such time as they shall think fit; provided always that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General or District Superintendent, to require that the Officers so appointed shall be discontinued: such person shall be relieved from the charge of such additional Force from the expiration of such notice.

Additional Police Officers employed at the cost of individuals.

XIV. Whenever any Railway, Canal, or other Public work shall be carried on, or be in operation in any part of the country, and it shall appear to the Inspector-General that the appointment of an additional Police Force in such neighbourhood is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, it shall be lawful for the Inspector-General, with the consent of the Governor in Council, to direct the employment of such additional Force, and to maintain the same so long as such necessity shall continue; and to make orders from time to time upon the Trea-

Appointment of additional Force in the neighbourhood of Railway and other works.

surer or other Officer having the control or custody of the Funds of any Company carrying on such works, for the payment of the extra Force so rendered necessary as aforesaid.

Payment of money for support of additional Police Force.

XV. All monies paid in respect of such additional Force as is mentioned in the two last preceding Sections, shall be paid into a fund to be called "The General Police Fund," and shall be applied to the maintenance of the Police Force under such orders as the Governor in Council may pass; and all sums of money payable under those Sections shall be recoverable by suit in any competent Court or by distress and sale of the goods of the defaulter under the warrant of a Magistrate.

Special Police Officers.

XVI. When it shall appear that any tumult, riot, or outrage has taken place, or may be reasonably apprehended in any place, and that the ordinary Officers appointed for preserving the peace are not sufficient for its preservation, and for the protection of the inhabitants, and the security of property in such place, it shall be lawful for any Police Officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the public or village servants, or residents of the neighbourhood, as such Police Officer may require to act as special Police Officers for such time and in such manner as he shall deem necessary; and it shall be the duty of such Magistrate at once to comply with such applications.

Powers of special Police Officers.

XVII. Every special Police Officer so appointed shall have the same powers, privileges, and protection, and be liable to all such duties and penalties, and be subordinate to the same authorities as the ordinary Officers of Police.

Refusal to serve.

XVIII. If any person being appointed a special Police Officer as aforesaid, shall without sufficient excuse neglect or refuse to serve as such, or to obey such lawful order or direction as may be given him for the performance of his duties, he shall be liable upon conviction before a Magistrate to a fine not exceeding fifty Rupees for such neglect, refusal, or disobedience.

Police Officer not to resign without leave or two months' notice.

XIX. No Police Officer shall be at liberty to resign his office, or withdraw himself from the duties thereof, unless expressly allowed to do so in writing by the District Superintendent; or

unless he shall have given to his superior Officer two months' notice in writing of his intention to do so. Nor shall any such Police Officer engage in any employment or office whatever, other than his duties under this Act, unless expressly permitted to do so in writing under the seal of the Inspector-General.

Unlawful assumption of Police functions, personation of Police, &c.

XX. From and after the passing of this Act, every person, not being or having ceased to be, a duly enrolled Police Officer, who shall unlawfully assume any function or power belonging to the Police; and who shall not forthwith deliver up his certificate, and all the clothing, accoutrements, and appointments, and other necessaries which may have been supplied to him for the execution of his duty; or who shall have in his possession any distinctive article of the dress or appointment directed to be worn exclusively by the Police Force, without being able to account satisfactorily for his possession thereof; or who shall put on the dress of any Police Officer, or any dress designed to represent it, or to be taken for it; or who shall otherwise personate the character or act the part of any Police Officer for any purpose whatever; shall, in addition to any other punishment to which he may be liable for any offence committed under assumed character, be liable on conviction before a Magistrate to penalty not exceeding two hundred Rupees, or to imprisonment, with or without hard labor, for a period not exceeding six months or both.

Duties of Police Officers.

XXI. Every Police Officer shall, for all purposes in this Act contained, be considered to be always on duty and shall have the powers of a Police Officer in every part of the Genaral Police Distrct. It shall be his duty to use his best endeavours and ability to prevent all crimes, offences, and public nuisances; to preserve the peace to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued to him.

Police Officer may arrest without warrant.

XXII. It shall be the duty of every Police Officer, and he is hereby authorized, to arrest without warrant.—

1. Any person who is charged on credible information,

Person charged with or suspected of grave crimes.

or whom he has reasonable ground to suspect of having been concerned in any grave or forcible crime or outrage.

Persons charged with aggravated assault recently committed.

2. Any person who is charged with committing an aggravated assault, in every case in which he shall have good reason to believe that such assault has been committed, although not in his view and that by reason of the recent commission of the offence a warrant could not have been issued.

Persons committing a breach of the peace.

3. Any person committing, or attempting to commit, any breach of the peace in his view, and who refuses to desist on being required thereto.

Persons found injuring public buildings, &c.

Proviso.

4. Any person found injuring the public buildings, roads, tanks, and water-channels, or committing any offence punishable by law. Provided always that, where such offence is of a slight and petty nature, it shall not be necessary for the Police Officer to arrest, if, from the circumstances of the case, there is no reason to apprehend that the party will abscond.

Vagrants and suspicious persons.

5. Any vagrant whom he shall find disturbing the public peace, or whom he shall have good cause to suspect to having committed or being about to commit a crime; all persons whose name and residence is unknown, or whom he may find by night lying or loitering in any high-way, road, or other place, and who, in either case, are unable to give a satisfactory account of themselves.

Persons assaulting Police Officer.

6. Any person who assaults, resists, or obstructs such Police Officer in the execution of his duty, or aids or excites others so to do.

Persons escaping from legal custody.

7. All persons who, having been in legal custody, shall have escaped therefrom.

Persons charged with an offence, refusing to give name.

8. All persons who are charged with having done any injury or admage to the person or property of another, and who refuse to give their name and residence, or who give one which there is ground to believe to be false, may be detained solely for the purpose of ascertaining such name and residence, with a view to future proceedings.

XXIII. Every person taken into custody by any Police Officer, without warrant, except persons detained for the mere purpose of ascertaining their name and residence, shall forthwith be delivered into the custody of the Police Officer in charge of a Station House, in order that such person may be secured until he can be brought before a magistrate to be dealt with according to law, or may give bail for his appearance before a Magistrate, if the Officer in charge shall deem it prudent to take bail as hereinafter mentioned; provided always that, where bail is not taken, the prisoner shall be brought before a Magistrate within twenty-four hours, unless circumstances render delay unavoidable.

Persons arrested without warrant to be taken to Station house until brought before Magistrate or bailed.

Proviso.

XXIV. Whenever any person shall be brought in custody, without a warrant, to any Station House, at a time when he cannot at once be sent before a Magistrate, and shall be charged with any bailable offence, or with any unbailable offence of which it shall appear to the Officer in charge of the Station House that the prisoner is falsely accused, it shall be lawful for such Police Officer to release the accused on bail or on his own recognizance to appear before the Magistrate when required.

Releasing on bail.

XXV. It shall be lawful for every Police Officer in charge of a Station, or other superior Officer of Police, to bind by recognizance any person to appear as prosecutor or as a witness before the Magistrate by whom any grave charge is being or is about to be investigated; and if any such prosecutor or witness shall refuse to execute such recognizance, it shall be competent to such Officer to forward the person in custody to the Magistrate's Court.

Superior Officer of Police may take recognizance for appearance of prosecutor or witness.

XXVI. Every recognizance so taken shall be without fee or reward and shall be conditioned for the appearance of the person thereby bound before a Magistrate at such time and place as may be required, and the time and place of appearance, and the sum thereby acknowledged, not exceeding one thousand Rupees, shall be specified in the said recognizance, or in the condition thereof; and the Officer

Condition of recognizance.

taking the recognizance shall return the same forthwith to the Magistrate present at the time and place when and where the party is bound to appear.

XXVII. If from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination of any case, or the further examination of any witnesses, it shall be lawful for any Magistrate from time to time by his warrant to remand the accused to the custody of any Police Officer, for such time as he shall deem necessary and reasonable, not exceeding eight clear days, to be secured in any Station House or Jail or to be otherwise detained in custody as to the said Magistrate shall appear expedient; provided always that any such Magistrate may order such accused party to be brought before him at any time or place before the expiration of the time for which such accused party shall have been remanded; or may discharge such accused party on his recognizances, with or without sureties, conditioned for his appearance at the time and place appointed for such further examination.

Remands.

Proviso.

XXVIII. It shall be lawful for any Police Officer without a warrant to enter and inspect all drinking shops, gaming houses, and other resorts of loose and disorderly characters; all premises of persons suspected of receiving stolen property; any locality, vessel, boat, or conveyance in any part of which places he shall have just cause to believe that crime has been, or is about to be committed; or which he reasonably suspects to contain stolen property; and then and there to take all necessary measures for the effectual prevention and detection of crime; and to take charge of all property reasonably suspected to have been stolen, and of all articles or things which may serve as evidence of the crime supposed to have been committed.

Entering drinking shops &c. without a warrant.

XXIX. Every Police Officer, not below the grade of Inspector shall be an Inspector of weights and measures, and may enter any shop or premises for the purpose of inspecting the weights and measures and instruments for weighing kept or used therein, and may seize any weight, measure, or instrument for weighing, which he may have reason to believe is false.

Inspection of weights and measures.

XXX. No Police Officer shall receive any complaint of any petty offence; or take into his custody any person brought to him accused of such petty offences, trespass, assault, quarrelling, or the like; and it shall be lawful for any Police Officer to refuse to receive any charge of an offence of a grave character, if he shall, on enquiry made of the complainant alone, see good grounds for doubting its truth: provided always that, if the charge be not of such a nature as under ordinary circumstances would justify the Police Officer in refusing to receive it, the particular reasons for refusing it are to be recorded by such Officer at the time.

Police Officer not to receive complaints of petty offences.

Proviso.

XXXI. It shall be lawful for any Police Officer to lay any information before the Magistrate, and to apply for summons, warrant, search warrant, or such other legal process as may by law issue, and may be expedient under the circumstances, against any person committing an offence against any law or enactment, or against any regulation for the protection of the Revenue, or against any person committing or failing to remove any public nuisance or unwarrantable obstructions, keeping disorderly houses, harbouring thieves, disturbing the peace, obstructing the due course of justice, and the like, and to prosecute such offenders up to final judgment; provided always that any rewards, forfeitures, and penalties, or shares of rewards, forfeitures, or penalties, which by law are payable to informers, and all costs of prosecution which may by any enactment be awarded to the prosecutor, shall be paid into the "General Police Fund."

Police Officers may lay informations, &c.

Proviso.

XXXII. From and after the passing of this Act, all summonses, warrants, search warrants, warrants of commitment for trial, or orders for the escort and conveyance of prisoners, and all other processes issued by any Officer in any criminal proceeding, shall be directed and delivered to Officers of the Police alone and such processes shall be served and executed by them and none others.

All warrants, &c., to be executed by members of the Police Force.

XXXIII. Where any such warrant, order, or process shall be directed or delivered to any of the said Officers, unless it be necessary for the due

Warrant to be endorsed.

execution thereof that such warrant be executed without delay, the person receiving it shall deliver the same to any Officer authorized for that purpose, who shall take charge of it, and appoint by endorsement thereon one or more Police Officers to execute the same or endorse it to any other Officer for a like purpose; and every Police Officer whose name shall be so endorsed thereon shall have the same power privileges, and protection as if the same had originally been directed to him by name; provided also that every such process shall be executed with all secrecy and despatch; and shall have full force in any part of the Madras Presidency except within the limits of the Supreme Court, without further formality or local endorsement; and that all Police authorities shall every where be assisting in the execution of such process.

Proviso.

XXXIV. Every summons, notice, or other Criminal process may be served on the party named personally, or be left with some adult male member of his family, or a copy thereof may be affixed on some conspicuous part of his usual place of abode; and any party failing or neglecting to obey such summons or notice duly served, shall be liable, at the discretion of the Magistrate or Court that issued the process, to a penalty not exceeding ten Rupees unless such person shall be able to prove that he was prevented by unavoidable accident or other satisfactory cause from obeying such summons, notice, or the like.

Service of summonses, &c.

XXXV. A Magistrate may, without issuing any summons, forthwith issue his warrant to bring before him any person charged with an offence cognizable by him, or whose attendance it may for any reason be necessary to enforce, whenever it shall appear probable that such person will not attend unless compelled so to do.

Warrant without summons.

XXXVI. A Police Officer executing a warrant of arrest shall notify the substance of the wrrrant, and if required so to do shall show the warrant.

Notification of substance of warrant.

XXXVII. In making an arrest, the Police Officer executing the warrant shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Warrant how to be executed.

XXXVIII. After arrest the prisoner shall not be subjected

No unnecessary restraint.

to any more restraint than such as may be necessary to prevent his escape.

XXXIX. Any Police Officer authorized by a warrant to arrest a person accused of any offence for which a warrant may issue on complaint, may break open any outer or inner door or window of a dwelling house, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking of outer door or window.

XL. If information be received that a person accused of any offence for which a warrant may issue, has concealed himself in a Zenanah or female apartment in the actual occupancy of women, the Officer employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused; and if such person shall not deliver himself up, the Police Officer authorized to execute the warrant, may break open the Zenanah and execute the process intrusted to him, giving notice at the same time to any woman in the Zenanah that she is at liberty to withdraw.

Breaking open a Zenanah or female apartment.

Party arrested to be brought immediately to the authority mentioned in the warrant.

XLI. After arrest made, the Police Officer executing the warrant shall without unnecessary delay bring the person arrested before Magistrate or other authority described in the warrant.

XLII. No Police Officer shall offer to the person arrested any inducement, by threat or promise or otherwise, to make any disclosure. But no Police Officer shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

No threat, or promise, to compel disclosure by party arrested.

XLIII. If any Police Officer shall at any time find himself unable to effect an arrest, it shall be lawful for him to require any and every person present to assist and aid him in making the arrest; and any person who shall refuse or neglect to comply with such requisition, shall be liable, on conviction before a Magistrate, to a fine not exceeding fifty Rupees or to imprisonment for a period not exceeding three months, or both.

Police Officer may require assistance.

Penalty.

XLIV. Every Police Officer who shall be guilty of any violation of duty or wilful breach of any lawful orders and regulations not punishable under Section X of this Act; or who shall cease to perform the duties of his office without leave, or without having given two months' notice as provided by this enactment, or engage without authority in any employment other than his Police duty; or who shall maliciously and without probable cause prefer any false, vexatious, or frivolous charge or information against any individual; or who shall knowingly and wilfully and with evil intent exceed his powers; or shall be guilty of any wilful and culpable neglect of duty in not bringing any person, who shall be in his custody without a warrant, before a Magistrate as hereinbefore provided; or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable on conviction before a Magistrate to a penalty not exceeding three months' pay, or to imprisonment with or without hard labor not exceeding three months, or both.

Penalties for neglect of duty, &c.

XLV. Any Police Officer who shall on any pretext, or under any circumstance, directly or indirectly collect or receive any fee, gratuity, diet-money, allowance, or recompense, other than he may be duly authorized by the Inspector-General or other Officer acting under his order to collect or receive, shall on conviction before a Magistrate be liable to a penalty not exceeding six months' pay, or to imprisonment with or without hard labor not exceeding six months, or both.

Penalty for receiving unauthorized fees, &c.

XLVI. Any Police Officer who shall directly or indirectly extort, exact, seek, or obtain any bribe or unauthorized reward or consideration, by any illegal threat, or pretence, or for doing or omitting or delaying to do any act which it may be his duty to do or to cause to be done, or for withholding or delaying any information which he is bound to afford or to communicate; or who shall attempt to commit any of the offences above said, or shall be guilty of cowardice, shall be liable upon conviction before a Magistrate to a fine not exceeding twelve months' pay, or to imprisonment with or without hard labor not exceeding twelve months, or both. Provided always that nothing in the three last preceding Sections shall be

Penalty for extortion, &c.

deemed to preclude the Magistrate from committing for trial any cases of this nature too serious for his cognizance.

XLVII. If any person shall assault or resist any Police Officer in the execution of his duty; or shall aid or incite any other person so to do; or shall maliciously and without probable cause prefer any false or frivolous charge against any Police Officer; such person shall, on conviction of such offence before any Magistrate, be liable to a fine not exceeding fifty Rupees, or to imprisonment with or without hard labor not exceeding three months, or both.

Penalty for obstructing a Police Officer in the execution of his duty.

XLVIII. Any person who in any street, road, thoroughfare, or passage, within the limits of any Town, commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, or damage of the residents and passengers, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty Rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any Police Officer to take into custody without warrant any person who within view commits any such offence.

Certain duties of Police Officers. Obstructions and nuisances in roads.

First. Any person who shall slaughter any cattle or clean any carcase in the streets; any person riding or driving any cattle, recklessly and furiously, or training or breaking any horse or other cattle on or near any public road, to the danger of the passers:

Slaughtering cattle, furious riding, &c.

Second. Any person who wantonly or cruelly abuses or tortures any animal:

Cruelty to animals.

Third. Any person who shall keep any cattle, or conveyance of any kind standing in any road or street longer than is required for loading or unloading, or for taking up or setting down passengers; or who shall leave any conveyance in such a manner as to cause inconvenience or danger to the public:

Obstructing passengers.

Fourth. Any person exposing goods for sale on the road so as to obstruct passengers:

Exposing goods for sale on road

Fifth. Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any pile, cowshed, stable, or the like within the bounds of any thoroughfare; or who causes

Throwing dirt into street.

any offensive matter to run from any house, factory, dungheap, or the like into the street:

Being found drunk in any thoroughfare.

Sixth. Any person found in any thoroughfare drunk and riotous, or incapable of taking care of himself:

Indecent exposure of person.

Seventh. Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance, by easing himself in or by the side of, or near any public street or thoroughfare; or by bathing or washing in any tank or reservoir, not being a place set apart for that purpose:

Neglect to protect dangerous places.

Eighth. Any person who neglects to fence in or duly to protect any well, tank, or other dangerous place or structure.

Regulattion of public processions, &c. and of carriages and persons at places of public resort.

XLIX. The Superintendent and Superior Officers of Police may, as occasion requires, direct the conduct of all assemblies and processions in the public roads, streets, or thoroughfares, prescribe the routes by which, and the times at which such processions may pass; keep order in the public roads, streets, thoroughfares, ghauts, and landing places, and all other places of public resort, and prevent obstructions on the occasion of such assemblies and processions and in the neighbourhood of places of worship during the time of public worship, and in any case when the roads, streets, or thoroughfares, ghauts or landing places, may be thronged, or may be liable to be obstructed: they may also regulate the use of music in the streets, on the occasion of native festivals and ceremonies; and may direct all crowds of twelve or more persons to disperse, when they have reason to apprehend any breach of the peace; and every person opposing, or not obeying the orders so issued as aforesaid, or violating the conditions of such license, shall be liable to a fine not exceeding one hundred Rupees. Provided always that nothing in this Section contained shall be deemed to interfere with the general control of the Magistrate over such matters.

Licenses for use of music in streets.

Jurisdiction.

L. In all cases of convictions under this Act, the Magistrate trying the case shall be restrained within the limits of his ordinary jurisdiction as to the

amount of fine or imprisonment he may inflict; provided always that such charges against Police Officers above the rank of Private shall only be adjudicated on by European functionaries, and that Village Watchers alone shall be liable to conviction dy Heads of Villages.

Proviso.

LI. Nothing contained in this Act shall be construed to prevent any person from being prosecuted for any offence made punishable on conviction by this Act; or to prevent any person from being liable under any other Law, Regulation, or Act to any other or higher penalty or punishment than is provided for such offence by this Act. Provided always that no person shall be punished twice for the same offence.

Power to prosecute not affected.

Proviso.

LII. All fines and penalties imposed, and all sums of money recoverable under the authority of this Act, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender by warrant of the Magistrate, in manner provided by Act II. of 1839.

Levy of fines.

LIII. All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police powers as hereby given, shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice in writing of such action and of the cause thereof, shall be given to the defendant, or to the Superintendent or other Superior Officer of the District in which the act was committed, cne month at least before the commencement of the action; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the defendant; and though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge, before whom the trial shall be, shall certify his approbation of the action; provided always that no action shall in any case lie where such Officers shall have been prosecuted criminally for the same act.

Limitation of action.

Proviso.

LIV. When any action, prosecution, or proceeding shall be brought against any Police Officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate; and such plea shall be proved by the production of the warrant directing the act and purporting to be signed by a Magistrate. And the defendant shall thereupon be entitled to a decree in his favor, notwithstanding any defect of jurisdiction in such Magistrate. And no proof of the signature of such Official shall be necessary, unless the Court shall see reason to doubt its being genuine; provided always that any remedy which the party may have against the authority issuing such warrant shall remain entire.

Plea that act was done under a warrant.

Poviso.

LV. This Act shall take effect in any and every such District as the Governor in Council shall appoint by notification published in the Official Gazette.

Scope of Act.

SCHEDULE.

LVI. The following words in Section XXXVI. of Regulation IX. 1816; "The Officer entrusted with the service of the summons in such cases, as well as in all other cases wherein bail may not be required, shall demand only an acknowledgment of the receipt of it and in the absence of the party, the summons may be served on the principal person in his house or family, if such person be willing to receive the same, and to return an acknowledgment for the party;" and Section XLII.

Laws repealed.

Regulation XI. 1816, Sections III, IV, V, VI, VII, XI, XV, XVI, XVII, XVIII, XXI, XXII, XXIII, XXIV, XXV, XXVI, Clause 2, XXIX, XXXV, XXXVIII, XXXIX, XL, XLI, XLVIII, and LV.

Regulation IV. 1821, Section III.

So much of Clause 2 Section II. of Regulation IV. 1821 as declares that all Subordinate Officers of Police of every description shall be subject to the authority of the Tuhseeldars of their respective Districts.

So much of Section VII. of Regulation VI. 1831, as affects

Village Watchers or other persons holding village offices in the Police Department.

Act VII. of 1843, Sections XXXIX. and XL.

So much of Clause 4 Section XIII. of Regulation XI. 1816, as directs the Head of the Village to apprehend any person supposed to have committed a murder.

Laws to be amended.

So much of Clause 1 Section XXVII. of Regulation XI. 1816 as directs the Head of the Village to make every exertion to apprehend any person accused or suspected of having committed the offences referred to in the said Clause.

FORM A.

A. B. has been appointed a member of the Police Force under Act XXIV. of 1859, and is vested with the powers, functions and privileges of a Police Officer.

BENGAL.--NATIVE PASSENGER VESSELS.

ACT No. XXV. OF 1859.

[Passed on the 14th December, 1859.

1, 2, 3, 4 Limits the number of Passengers in native Craft between specified ports to the proportion of one passenger to every 4 tons, without license; and (2) limits the number in licensed Craft to not exceeding one to every ton; and imposes certain conditions as to room to entitle Craft to obtain license; and (3) fixes fine for Tindals exceeding the number in unlicensed vessels; and (4) for Tindal exceeding the number in licensed vessels.

5. Excepts from the restriction established in s. 1, craft proceeding from ports gazetted under the exception.

6. Vests in Collectors of Sea Customs the power of granting licenses, and prescribes the particulars of the license.

7, 8, 9. Establishes a penalty on Tindals going to sea without being provisioned according to law; and (8), also for not supplying the passengers with prescribed allowance of water; and (9), provisions.

10. Tindal to sign and deliver to Customs officer a list of his passengers, which list officer shall countersign if correct, and port clearance to be withheld till this is done.

11. Establishes penalty for bringing into port any craft loaded or provisioned contrary to the regulations of this Act.

12. Authorises the Principal Customs Officer of port to enter and inspect passenger vessels.

13. Establishes penalty for landing passenger at wrong port without his consent.

14. Saves to passengers civil rights of action.

15, 16. Makes all offences under Act punishable in a summary manner and (16) makes offender liable to jurisdiction whenever found.

17. Authorizes Magistrate to compensate person aggrieved out of fine.

18. Interpretation clause.

19. Act to commence from expiration of Act I, 1857.

An Act to prevent the over-crowding of Vessels carrying Native Passengers in the Bay of Bengal.

Preamble.

Whereas it is necessary to prevent the over-crowding of Vessels carrying Native Passengers in the Bay of Bengal; It is enacted as follows:—

Number of Native Passengers to be carried in unlicensed Vessels.

I. No Vessels shall carry Native Passengers from any port or place under the Presidency of Fort St. George or from Chittagong or from any Port in the Province of Orissa, to any Port or place on the Eastern Coast of the Bay of Bengal or in the Straits of Malacca or in Ceylon; or from any Port or place on the Eastern Coast of the Bay of Bengal or in the Straits of Malacca, to any Port or place under the Presidency of Fort St. George, or to Chittagong, or to any Port in the Province of Orissa, in a proportion greater than one Passenger to every four tons of the burden of such Vessel, without a license.

Number of Native Passengers to be carried in licensed Vessels.

II. No Vessels shall be licensed to carry Passengers on any such voyage as aforesaid, in a proportion greater than one Passenger to every ton of burden, nor unless the Vessel has space on a deck or platform under hatches reserved for the accommodation of the Passengers in the proportion of six superficial feet for every Passenger, with not less than five feet clear between the upper deck and the lower deck or platform: except a Vessel proceeding in ballast from any part of the Coast of the Gulf of Manaar or Palks' Strait to any Port or place in Ceylon which may be licensed to carry a number of Passengers not exceeding the proportion of two and a half to every ton of her burden, provided that the whole of the space usually allotted for cargo and not occupied by ballast, be kept for the accommodation of the Passengers, and for storing the provisions and water for their use, and that the space left clear for the ac-

First Exception.

commodation of the Passengers on the deck or decks of the Vessel be not less than four superficial feet for each Passenger: and

Second Exception.

except a vessel carrying Native Passengers between Chittagong and any Port or place on the Coast of Arracan which may be licensed to carry a number of Passengers not exceeding the proportion of two and a half to every ton of her burden, subject to such regulations as the Government of Bengal may prescribe.

Penalty on Master of unlicensed Vessel.

III. The Master or Tindal of any Vessel which shall carry Native Passengers on any such voyage as aforesaid, without a license, in a proportion exceeding that laid down in Section I, shall be liable to a fine not exceeding twenty Rupees for each Passenger in excess of such proportion.

Penalty on Master of licensed Vessel.

IV. The Master or Tindal of any licensed Vessel which shall carry on any such voyage a greater number of Passengers than is specified in the license, or in which the accommodation therein required shall not be afforded, shall be liable to a fine not exceeding twenty Rupees for each Passenger in excess of such number, or for each Passenger who is not provided with accommodation agreeably to the license.

Government to appoint Ports for shipment of Passengers when the number of Passengers to be carried is greater than one to every four tons of burden.

V. Passengers in a greater number than one Passenger to every four tons of the burden of any Vessel, shall not be shipped from the territories under the Government of Fort St. George or from the Province of Orrissa, for Ceylon or the Eastern Coast of the Bay of Bengal, or the Straits of Malacca; or from the Eastern Coast of the Bay of Bengal or the Straits of Malacca, for the said Territories or Province or for Chittagong, except from such Ports as shall be from time to time appointed by the local Government by an Order published in the Government Gazette, and in the Straits Settlement in such manner as the Governor shall notify; and the Master or Tindal of any Vessel who shall take on board Passengers for such voyage from any other Port or place in a greater proportion to the burden of the Vessel than is above-mentioned, shall be liable to a fine not exceeding twenty Rupees for each Passenger embarked.

VI. It shall be at the discretion of the Collectors of Sea Customs for the Ports appointed for shipping Native Passengers, or such other persons as the local Government may from time to time appoint for the purpose, to grant licenses to Vessels under this Act. Provided that such licenses shall not be granted, except for Vessels within the exceptions in Section II. till the Vessels have been surveyed according to such directions as shall be given from time to time by the local Government. The license shall describe the Vessel, her tonnage, and rig; the number of her boats, anchors, and cables; and what instruments for the purpose of navigation she is supplied with; also the name of the owner and of the Master or Tindal and the number and composition of the crew; and shall specify the number of Passengers she may carry and the space to be assigned for their accommodation.

Grant of licenses to Vessels.

VII. The Master or Tindal of any Vessel licensed to carry Passengers from any Port in the territories under the Government of Fort St. George or from Chittagong or from any Port in the Province of Orissa, to any Port or place on the Eastern Coast of the Bay of Bengal or the Straits of Malacca; or from any Port on the Eastern Coast of the Bay of Bengal or the Straits of Malacca to any Port or place in the territories under the Government of Fort St. George, or to Chittagong, or to any Port in the Province of Orissa; which shall proceed on such voyage not being furnished with provisions and water according to such scale as shall be laid down from time to time by an order of the local Government published in the Government Gazette, and in the Straits Settlement in such manner as the Governor shall notify, shall be liable to a fine not exceeding twenty Rupees for each Passenger in excess of the number fully supplied with provisions and water according to such scale.

Certain licensed Passenger Vessels to carry provisions according to appointed scale.

VIII. The Master or Tindal of any Vessel licensed to carry Passengers as aforesaid, who shall wilfully and without stisfactory excuse omit to supply to every Passenger the prescribed allowance of food and water, shall be liable for such omission to a fine which may extend to twenty Rupees for every Passenger who has suffered privation thereby.

Penalty for omitting to supply Passengers with prescribed allowance of food and water.

IX. The Master or Tindal of any Vessel licensed to carry Passengers from any Port under the Government of Fort St. George to Ceylon, or between Chittagong and any Port or place on the Coast of Arracan who shall proceed on any such voyage without having laid in a supply of water and provisions for the Passengers according to a scale to be fixed by the Collector of Sea Customs for such Port, or such other person as the local Government may from time to time appoint for the purpose, which shall be hung up at the Custom House of the Port, shall be liable to a fine not exceeding one hundered Rupees.

Supply of provisions on board Passenger Ships plying to and from Ceylon.

X. The Master or Tindal of any Vessel licensed to carry Passengers as hereinbefore provided, shall sign and deliver in duplicate to the principal Officer of Customs at the place of embarkation, or such other person as the local Government may from time to time appoint for the purpose, a list, according to the form annexed to this Act, of all Passengers to be conveyed in such Vessel; and such Officer, after satisfying himself of the correctness of the same, and that the number of Passengers authorized is not exceeded, shall countersign and return one such list to the Master or Tindal, to be produced to the proper Officer at the Port to which the Vessel is bound; and should any additional Passengers engage to proceed by such Vessel after such list has been so countersigned, the Master or Tindal may insert their names in the original list obtaining the signature of the controlling Officer as before. The Officer in charge of the Customs may withhold the Port Clearance till this rule is complied with.

List of Passengers to be signed by Master.

Additional Passengers.

XI. If any Vessel, bringing Native Passengers into any Port or place whatsoever on the Eastern Coast of the Bay of Bengal or in the Straits of Malacca, from any Foreign European Settlement situate on the line of coast within the limits of the Presidency of Fort Saint George, shall have on board a greater number of Passengers than in the proportion prescribed in Section I. of this Act, the Master or Tindal of such Vessel shall be liable to a penalty of twenty Rupees for each Passenger in excess of such proportion, unless the Vessel shall

Penalty for bringing Native Passengers into any Port on the Eastern Coast of the Bay of Bengal from any Foreign European Settlement in excess of authorized proportion.

have been licensed under Section VI. of this Act and shall have complied with the stipulations as regards space, water, and provisions laid down in Section II.

XII. The Principal Officer in charge of the Customs at the Port of embarkation or of destination, or any person authorized by him, shall be at liberty at all times to enter and inspect any Passenger-Vessel, and the fittings, provisions, and stores therein; and whoever impedes such entry or inspection, or refuses to allow of the same, shall be liable to a fine not exceeding fifty Rupees.

Penalty for impeding entry or inspection.

XIII. If any Native Passenger in any Ship shall be landed at any Port or place other than the Port or place at which he may have contracted to land, unless with his previous consent, or unless such landing is made necessary by perils of the sea or other unavoidable accident, the Master shall for each offence be liable to a penalty not exceeding two hundred Rupees.

Penalty on landing Passenger at a place other than that at which he has contracted to land.

XIV. Nothing in this Act contained shall take away or abridge any right of action which may accrue to any Native Passenger, or to any other person in respect of the breach or non-performance of any contract made with the Master or Owner of the Ship or his Agent.

Passenger's right of action preserved.

XV. All offences against this Act shall be punishable in a summary manner by a Magistrate. If the person directed to pay any penalty is the Master or Tindal of a Ship, and the same is not paid at the time and in the manner prescribed by the order of payment, the Magistrate may, in addition to the means prescribed by law for enforcing payment, direct by warrant the amount remaining unpaid to be levied by distress and sale of the said Ship, her tackle, furniture, and apparel.

Adjudication of offences and recovery of penalties.

Sum ordered to be paid leviable by distress on Ship.

XVI. For the purpose of the adjudication of penalties under this Act, any offence shall be deemed to have been committed within the limits of the jurisdiction of the Magistrate of the place where the offender is found.

Jurisdiction.

XVII. Any Magistrate imposing any Penalties under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in compensating any

Application of penalties.

person for any wrong or damage which he may have sustained by the act or default in respect of which such penalty is imposed, or in or towards payment of the expenses of the proceedings.

XVIII. The word "Magistrate" in this Act shall include a Magistrate of Police appointed under Act XIII. of 1856, a Joint Magistrate, and any person lawfully exercising the power of a Magistrate, and a Justice of the Peace.

Interpretation.

"Magistrate."

The word "Local Government" shall mean the person or persons for the time being immediately administering the executive Government of that portion of the said territories where the Port or place in question is situate.

"Local Government."

Commencement of Act.

XIX. This Act shall commence and take effect from the expiration of Act I. of 1857.

SCHEDULE.

FORM.

1	2	3	4	5	6	7
Name of Vessel.	Name of Master.	Tons per register.	Port of embarkation.	Numbers and names of Passengers.	Port at which Passengers have contracted to be landed.	Date of departure.

(Signed) ———,

Master.

(Countersigned) ———,

Principal Officer of Customs.

Note —In the case of Vessels carrying Passengers to Ceylon, or between Chittagong and any Port or place on the Coast of Arracan, it will be sufficient to insert the number, and not the names, of Passengers in Column 5.

ARMS AND AMMUNITION.

ACT No. XXVI. OF 1859.

[*Passed on the* 14*th December*, 1859.

Continues Act XXVIII. of 1857 to the 30th June 1860.

An Act to continue in force for a further period Act XXVIII. of 1857.

Whereas it is expedient that Act XXVIII. of 1857 *(relating to the importation, manufacture, and sale of Arms and Ammunition and for regulating the right to keep or use the same)* should continue in force for a further period; It is enacted as follows:—

Preamble.

Act XXVIII. of 1857 continued till 30th June 1860.

I. Act XXVIII. of 1857 shall continue in force until the 30th day of June 1860.

STATE OFFENCES.

ACT No. XXVII. OF 1859.

[*Passed on the 14th December*, 1859.

Continues Acts XIV. 1857; XVI. 1857; and XVII. 1857 to the end of 1860.

An Act to continue in force for a further period Acts XIV. of 1857, XVI. of 1857, and XVII. of 1857.

Whereas it is expedient that Act XIV. of 1857 *(to make further provision for the trial and punishment of certain offences relating to the Army, and of offences against the State)* Act XVI. of 1857 *(to make temporary provision for the trial and punishment of heinous offences in certain Districts)*, and Act XVII. of 1857 *(to provide temporarily for the apprehension and trial of Native Officers and Soldiers for Mutiny and Desertion)*, should continue in force until the end of the year 1860; It is enacted as follows:—

Preamble.

Acts XIV. XVI. and XVII. of 1857 continued till the end of the year 1860.

I. Acts XIV. of 1857, XVI. of 1857, and XVII. of 1857 shall continue in force until the end of the year 1860.

FOREIGNERS.--PASSPORT ACT.

ACT No. XXVIII. OF 1859.

Passed on the 26th December, 1859.

Recites expediency of reviving and continuing Act XXXIII. 1857.

I. Continues the said Act for 2 years to be reckoned from date of its expiration.

An Act to revive and continue in force for a further period Act XXXIII. of 1857 (to make further provision relating to Foreigners).

Preamble.

Whereas by Act XXXIII. of 1857 ("An Act to make further provision relating to Foreigners" which received the assent of the Governor General on the 5th December 1857), it was enacted that the said Act should continue in force for two years; and whereas it is expedient to revive and continue the said Act for a further period; It is enacted as follows:—

Act XXXIII. of 1857 to continue in force for two years from 5th December, 1859.

I. The said Act XXXIII. of 1857 shall continue in force for the period of two years from the 5th day of December 1859, and shall be deemed and taken to have had effect as if this Act had actually passed and received the assent of the Governor General before the expiration of the said Act XXXIII. of 1857.

CALCUTTA:—PRINTED BY D'ROZARIO AND CO.

